

O7C3MEN1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 490 (SHS)

5 ROBERT MENENDEZ,
6 WAEL HANA, a/k/a "Will Hana,"
and FRED DAIBES,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.
10 July 12, 2024
9:45 a.m.

11
12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge
15 -and a Jury-

16 APPEARANCES

17 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

18 BY: PAUL M. MONTELEONI

19 DANIEL C. RICHENTHAL

ELI J. MARK

20 LARA E. POMERANTZ

CATHERINE E. GHOSH

21 Assistant United States Attorneys

O7C3MEN1

APPEARANCES CONTINUED

PAUL HASTINGS LLP
Attorneys for Defendant Menendez
BY: ADAM FEE
AVI WEITZMAN
PAUL GROSS
RITA FISHMAN

GIBBONS, P.C.
Attorneys for Defendant Hana
BY: LAWRENCE S. LUSTBERG
ANNE M. COLLART
CHRISTINA LaBRUNO
ANDREW J. MARINO
RICARDO SOLANO, Jr.
ELENA CICOGNANI
JESSICA L. GUARRACINO

CESAR DE CASTRO
SETH H. AGATA
SHANNON M. McMANUS
Attorneys for Defendant Daibes

Also Present:
Emna Zghal, Interpreter (Arabic)
Rodina Mikhail, Interpreter (Arabic)

O7C3MEN1

Charge

1 (Trial resumed; jury not present)

2 THE COURT: The jury is here. Please be seated.

3 My current intention is not to give the indictment to
4 the jury at the beginning. I don't think that's needed. But
5 if they do ask for it, I'll give it to them. So the parties
6 should look at the indictment, and if they think there is any
7 redactions that are needed to take place, you'll let me know.
8 And then I'll rule on that if there is an issue.

9 (Jury present)

10 THE COURT: Good morning, ladies and gentlemen of the
11 jury. If you're following along, I'm going to pick up where I
12 left off yesterday, which is at page 36. And if you're not
13 following along, obviously, simply listen.

14 And this next charge I'm going to give you, you
15 already know because I gave it to you a couple of times during
16 the course of the trial and during the course of the
17 summations. Actually, not during the trial itself, but during
18 summations I gave you the charge.

19 There are several individuals whose names you have
20 heard during the course of this trial but who did not testify
21 here in front of you. I instruct you that each party had an
22 equal opportunity or lack of opportunity to call any of those
23 witnesses. You should not draw any inferences or reach any
24 conclusions as to what they would have testified to had they
25 been called. Their absence should not affect your judgment in

O7C3MEN1

Charge

1 any way.

2 You should, however, remember that the law does not
3 impose on a defendant in a criminal case the burden or duty of
4 calling any witness or producing any evidence. You know that;
5 I've told you that several times.

6 The defendants have called one or more witnesses who
7 have given an opinion of those defendants' characters or
8 reputations. This testimony is not to be taken by you as the
9 witness's opinion as to whether each defendant is guilty or not
10 guilty. That question is for you alone to determine.

11 You should, however, consider this evidence, together
12 with all the other facts and evidence in this case, in
13 determining whether the defendant you are considering is guilty
14 or not guilty of the charges against that defendant.

15 Thus, after considering all of the evidence, including
16 testimony about the witness's opinion of that defendant's good
17 character or reputation, you find a reasonable doubt has been
18 created as to a particular charge or charges, you must acquit
19 that defendant of those charge or charges.

20 On the other hand, after considering all of the
21 evidence, including that of the witness's opinion of that
22 defendant's character or reputation, you're satisfied beyond a
23 reasonable doubt that the defendant you are considering is
24 guilty, you should not acquit that defendant merely because you
25 believe that witness believes that defendant to be a person of

O7C3MEN1

Charge

1 good character or to have a good reputation.

2 Now, the three defendants here did not testify in this
3 case. Under our Constitution, a defendant has no obligation to
4 testify or to present any evidence, because it's the
5 government's burden to prove each defendant guilty beyond a
6 reasonable doubt, and that burden remains with the government
7 throughout the entire trial, and never shifts to the defendant.
8 Again, you already know that.

9 A defendant is never required to prove he is innocent.
10 Therefore, you may not attach any significance to the fact that
11 the three defendants here did not testify in this trial. No
12 adverse inference against a defendant may be drawn by you
13 because that defendant did not take the witness stand and
14 testify. You may not consider this against the defendant you
15 are considering in any way in your deliberations.

16 Some of the people who may have been involved in the
17 schemes alleged in this trial are not on trial. That does not
18 matter. You may not draw any inference, favorable or
19 unfavorable, toward the government or the defendants from the
20 fact that individuals other than these three defendants were
21 not named as defendants in the indictment in this action. Nor
22 may you speculate as to the reasons why other persons are not
23 defendants here before you. Those matters are wholly outside
24 your concern, and have no bearing on your function as jurors.

25 During this trial, the defendants have contended that

O7C3MEN1

Charge

1 their actions were motivated by considerations that were not
2 unlawful. However, even if true, it is not a defense to any
3 count that the defendant may have been motivated by both proper
4 and improper motives. A defendant may be found to have the
5 requisite intent, even if he possesses a dual intent -- that
6 is, an unlawful intent and also a proper or a neutral intent.

7 Proof of motive is not a necessary element of the
8 crimes with which the defendants are charged. Proof of motive
9 does not establish guilt nor does the lack of proof of motive
10 establish that a defendant is not guilty. If the guilt of a
11 defendant is shown beyond a reasonable doubt, it is immaterial
12 what that defendant's motive for the crime or crimes may be, or
13 whether any motive be shown. But the presence or absence of
14 motive is a circumstance which you may consider as bearing on
15 the intent of a defendant.

16 You have heard testimony that one or more of the
17 defendants made or caused others to make certain statements to
18 law enforcement or prosecutorial authorities in which he
19 claimed that his conduct was consistent with innocence and not
20 with guilt. The government claims that these statements in
21 which the defendant attempted to exculpate himself are false.

22 If you find that a defendant gave a false statement in
23 order to divert suspicion from himself, you may, but are not
24 required to, infer that that defendant believed that he was
25 guilty. You may not, however, infer on the basis of this alone

O7C3MEN1

Charge

1 that the defendant is in fact guilty of the crimes with which
2 he is charged.

3 Whether or not the evidence as to a defendant's
4 statements shows that the defendant believed he was guilty and
5 the significance, if any, to be attached to any such evidence,
6 are matters for you, the jury, to decide. And you know that
7 also because those are issues of fact.

8 Now, in this next charge, I've also told you before
9 right now. The question of any possible punishment of the
10 defendant you are considering in the event of conviction is of
11 no concern to you, and should not in any sense enter or
12 influence your deliberations. The duty of imposing any
13 sentence in the event of conviction rests exclusively upon me.
14 That's part of my job. Not yours.

15 Your function is to weigh the evidence and to
16 determine whether or not each defendant is guilty beyond a
17 reasonable doubt based solely on the basis of evidence in this
18 trial. Under your oath as jurors, you cannot allow
19 consideration of the punishment that may be imposed upon the
20 defendant in the event of conviction to influence your verdict
21 in any way or in any sense enter into your deliberations.

22 Those are my general instructions. Now I'll turn to
23 the indictment itself, and give you first an overview.

24 The defendants -- Robert Menendez, Wael Hana, and Fred
25 Daibes -- have been charged in an indictment or also called a

O7C3MEN1

Charge

1 superseding indictment. Remember, the indictment is simply an
2 accusation. It's the means by which a criminal case is
3 started. It is not evidence, it is not proof of the guilt of
4 any defendant, it creates no presumption, and it permits no
5 inference that any defendant is guilty. The law is just the
6 opposite. You know that each defendant is presumed innocent of
7 the crimes charged, unless and until you find the government
8 has proven that defendant guilty beyond a reasonable doubt.

9 You are to give no weight to the fact that an
10 indictment has been returned against each of these defendants.
11 And each of the three defendants here has pled not guilty to
12 the charges in the indictment.

13 There are 18 counts. Each count charges one or more
14 defendants with a different crime. You must consider each
15 count separately and return a separate verdict of guilty or not
16 guilty for each. Whether you find the defendant or defendants
17 guilty or not guilty as to one offense should not affect your
18 verdict as to any other crimes charged.

19 I'll now summarize the offenses. And I can tell you
20 that I'm going to give you, I'll give the foreperson the
21 verdict sheet, and this will help you help guide your
22 deliberations. And it's quite straightforward, and it goes
23 count by count, Count One, Count Two, and so forth. And it
24 says what the charged crime is. For example, in Count One it
25 says "conspiracy to commit bribery." And then it will tell you

O7C3MEN1

Charge

1 which defendants are charged in that count. It's all laid out
2 for you.

3 So Count One, the three defendants charged in Count
4 One, conspiracy to commit bribery are Mr. Menendez, Mr. Hana,
5 and Mr. Daibes, and there is a line for each, then it says
6 guilty and not guilty. Guilty or not guilty. When you reach a
7 unanimous verdict on each defendant, you'll check the relevant
8 box, and you go right through to Count 18. And then at the
9 end, after a unanimous verdict has been reached on each of the
10 counts against each of the defendants charged in each of those
11 counts, you'll sign, every juror will sign the verdict form.
12 It helps order your deliberations, if you choose to follow that
13 order.

14 Now, I've told you what that there are 18 counts.

15 Count One charges that Mr. Menendez, Mr. Hana, and
16 Mr. Daibes participated in a conspiracy to bribe a public
17 official from approximately 2018 until approximately 2023.

18 Conspiracy is an agreement by two or more people to
19 take an action or actions that violate the law. When I say
20 it's in or about 2018 through in or about 2023, this simply
21 means approximately 2018 to approximately 2023.

22 Count Two charges from at least approximately 2018
23 through approximately 2023, those three defendants participated
24 in a conspiracy to commit honest services wire fraud.

25 And later in these instructions I'll go through what

O7C3MEN1

Charge

1 each of those counts means.

2 Count Three charges from approximately the same time
3 period, Mr. Menendez participated in a conspiracy to commit
4 extortion under color of official right. Again, I'll later in
5 these instructions tell with you what that crime consists of.

6 Count Four charges from approximately the same time
7 period, Mr. Menendez and Mr. Daibes conspired to endeavor, that
8 is, seek, to obstruct justice in connection with the federal
9 criminal prosecution of Mr. Daibes in the District of New
10 Jersey.

11 Count Five charges in the same time period,
12 Mr. Menendez demanded or accepted or received a bribe as a
13 public official in connection with actions to benefit Mr. Hana
14 and the government of Egypt.

15 Now, this is a substantive count, not a conspiracy
16 count. There are two different types in this indictment.
17 Remember, conspiracy is an agreement by at least two people to
18 commit an illegal act. And Count Five is the first of the
19 substantive counts. And I'll explain the difference in a
20 moment, but a conspiracy count is a different count than the
21 substantive count.

22 Six, Count Six charges in the same time period,
23 Mr. Hana and Mr. Daibes offered or paid a bribe to a public
24 official in connection with actions to benefit Mr. Hana and
25 Egypt. This is also a substantive crime.

O7C3MEN1

Charge

1 Count Seven, same time period, charges Menendez, Hana,
2 and Daibes with committing honest services wire fraud in
3 connection with actions to benefit Hana and Egypt.

4 Count Eight, same time period, charges Menendez
5 committed extortion under color of official right in
6 connections with actions to benefit Hana and Egypt.

7 Nine, same time period, charges Menendez and Hana
8 committed honest services wire fraud in connection with actions
9 to benefit Jose Uribe and associates of Mr. Uribe.

10 Count Ten, same time period, charges Mr. Menendez with
11 committing extortion under color of official right in
12 connection with actions to benefit Uribe and his associates.

13 Count Eleven, same time period, charges Menendez
14 demanded or accepted or received a bribe as a public official
15 in connection with actions to benefit Daibes and to assist
16 Daibes by acting for the benefit of the government of Qatar.

17 Count Twelve of the indictment charges, same time
18 period, Daibes offered or paid a bribe to a public official in
19 connection with actions to benefit Daibes or to assist him by
20 acting for the benefit of the government of Qatar.

21 Thirteen, same time period, charges Menendez and
22 Daibes with committing honest services wire fraud in connection
23 with actions to benefit Daibes, and to assist Daibes by acting
24 for the benefit of the government of Qatar.

25 Count Fourteen charges, same time period, Menendez

O7C3MEN1

Charge

1 with committing extortion under color of official right in
2 connection with actions to benefit Daibes and to assist Daibes
3 by acting for the benefit of the government of Qatar.

4 Count Fifteen charges from at least 2018 through in or
5 about 2022, Menendez and Hana participated in a conspiracy to
6 violate the federal statute that makes it unlawful for a public
7 official, here Mr. Menendez, to act as an agent of a foreign
8 principal required to register under the Foreign Agents
9 Registration Act. And during the trial that act has been
10 referred to as FARA. FARA, which is how it's commonly known.

11 Count Sixteen charges, from the same time period, that
12 Menendez was a public official acting as a foreign agent.

13 Seventeen charges that from approximately June of 2022
14 through in or about 2023, Menendez participated in a conspiracy
15 to obstruct justice in connection with a federal investigation
16 here in the Southern District of New York.

17 Count Eighteen, which is the last count in the
18 indictment, charges from approximately June 2022 through 2023,
19 Menendez sought to obstruct justice in connection with a
20 federal investigation in the Southern District of New York.

21 Now, I've already told you this, and you can see from
22 the verdict sheet, that you have to consider each count
23 separately, and each defendant who is involved in that count
24 separately, and you have to return a separate verdict of either
25 guilty or not guilty on each count for each defendant. Again,

O7C3MEN1

Charge

1 it's all laid out in the verdict sheet.

2 Whether you find the defendant you are considering
3 guilty or not guilty as to one offense must not affect your
4 verdict as to any other offense charged or any other defendant.

5 Now let's turn to the difference between the
6 conspiracy counts and substantive counts.

7 Counts One, Two, Three, Four, Fifteen and Seventeen
8 charge the defendants with conspiring, that is agreeing
9 together, to commit certain crimes.

10 The other counts charge what are called substantive
11 crimes, which are the charges underlying the conspiracy.
12 Remember that conspiracy is simply an agreement to commit a
13 crime. The substantive counts are the crimes that were the
14 objects of the conspiracies.

15 A conspiracy charge, generally speaking, alleges that
16 two or more people agreed together to accomplish an unlawful
17 objective or objectives. The focus of a conspiracy count is on
18 whether there was an unlawful agreement. There can be no
19 conspiracy unless at least two people reach such an agreement,
20 whether expressed or implied.

21 So when you're looking at the conspiracy counts,
22 think: Was there an agreement here? If so, what was it?

23 The substantive count, on the other hand, charges the
24 defendant with the actual or attempted commission, or with
25 aiding and abetting or causing the commission of a crime.

O7C3MEN1

Charge

1 The substantive offense may be committed by one
2 individual, and it doesn't have to involve any agreement or
3 assistance from anyone else. One individual alone can commit a
4 substantive offense. A conspiracy to commit a crime is a
5 completely separate offense from a substantive crime, although
6 the commission of a substantive crime may be an object or a
7 purpose of a conspiracy.

8 Since the essence of the crime of conspiracy is an
9 agreement or an understanding to commit a crime, it does not
10 matter if the crime, which was the object of the conspiracy,
11 was never committed. In other words, if a conspiracy exists
12 and certain other requirements are met, the conspiracy is
13 punishable as a crime, even if its purpose is never
14 accomplished.

15 Consequently in a conspiracy charge, there is no need
16 to prove that the crime or crimes that were the objectives of
17 the conspiracy actually were committed.

18 Do you see that, ladies and gentlemen? The conspiracy
19 is an agreement to commit a crime. That's the crime. So, it
20 doesn't matter whether the crime was actually committed. It
21 will for purposes of the substantive charge, but not for
22 purposes of the conspiracy charge. Because it is the agreement
23 to commit a crime, that's the crime of conspiracy.

24 To give you a simple example. If two people agree to
25 hold up a liquor store and do something that put the agreement

O7C3MEN1

Charge

1 into motion, they have committed the crime of conspiracy to
2 commit robbery, even if they never rob the liquor store.

3 By contrast, conviction of a substantive count
4 requires proof that the crime charged actually was committed or
5 attempted, but does not require proof of an agreement.

6 To take the liquor store example, there can be no
7 substantive crime of robbery unless the liquor store is
8 actually robbed or attempted to be robbed.

9 Of course, if a defendant both participates in a
10 conspiracy and commits the crime that was the object of the
11 conspiracy, for example, if the defendant agrees with somebody
12 to rob the liquor store and then goes on to commit the robbery,
13 that defendant may be guilty of both the conspiracy and the
14 substantive crime of robbery.

15 With respect to the substantive counts, you should be
16 aware that there are two ways in which you may find a defendant
17 guilty. The first way is that you may find that defendant
18 either committed, or willfully caused someone else to commit or
19 attempt to commit, the substantive crime charged in the
20 indictment. I'm going to refer to that way as a claim that a
21 defendant is guilty of a crime as what we call a "principal."

22 The second way is that you may find someone other than
23 the defendant committed the substantive crime at issue, and the
24 defendant aided and abetted the commission of that crime. I'll
25 refer to that as a claim that a defendant is guilty of a crime

O7C3MEN1

Charge

1 as an aider and abettor.

2 For the sake of convenience, I'll instruct you first
3 with respect to the counts that charge substantive crimes, then
4 I'll instruct you on the conspiracy counts.

5 And you'll see as we go along, there are certain
6 conspiracy counts that require that an overt act be taken
7 before you can find a defendant guilty of the conspiracy. And
8 there are other conspiracy counts that don't require an overt
9 act. But I'll go through those as we come to them.

10 Now, first we're going to do the substantive crimes,
11 then we'll do the conspiracy crimes.

12 Counts Five and Eleven charge receipt of a bribe.
13 Don't infer anything from the number of the counts. The order
14 that the crimes are charged are of no import to you. It
15 doesn't matter what order they're charged in.

16 Count Five charges Menendez with demanding, receiving,
17 or accepting a bribe in return for certain official actions to
18 benefit the government of Egypt and to benefit Mr. Hana.

19 Count Eleven charges Menendez with demanding,
20 receiving, or accepting a bribe in return for certain official
21 actions to benefit Daibes and to assist him by acting for the
22 benefit of the government of Qatar.

23 The defendant named in Counts Five and Eleven is
24 simply Mr. Menendez. Nobody else.

25 To establish a violation of demanding, receiving, or

O7C3MEN1

Charge

1 accepting a bribe for a public official, the government has to
2 prove each of the following four elements beyond a reasonable
3 doubt.

4 Again, when you go through these, and you can go
5 through the verdict sheet in any order you want, if you want,
6 since the first ones charged are Five and Eleven, you can go to
7 those first on the verdict sheet. That's entirely up to you.
8 As you go through it, you can look at each element and decide
9 amongst yourselves whether the government has proved each of
10 the elements beyond a reasonable doubt. And if the government
11 has, then you check as to that defendant, then you check off
12 guilty. If you unanimously feel that the government hasn't
13 proved one or more of those elements against the defendant you
14 are considering, then you check off not guilty. And if there
15 are varying views within the jury, you'll deliberate until you
16 reach an unanimous verdict. You exchange views. That's the
17 essence of deliberations.

18 Let's look at those four elements of Counts Five and
19 Eleven.

20 First, that at the time alleged in the indictment,
21 Mr. Menendez was a public official;

22 Second, that he directly or indirectly demanded,
23 sought, received, accepted, or agreed to receive something of
24 value, or for another person or entity at Mr. Menendez's
25 direction or for his indirect benefit to receive something of

O7C3MEN1

Charge

1 value;

2 Third, that he did so in return for being influenced
3 in the performance or non-performance of an official act; and

4 Fourth, that he acted with corrupt intent.

5 I'll explain all of those concepts.

6 Let's turn to the first element. I just told you that
7 the first element that the government has to prove beyond a
8 reasonable doubt is that Mr. Menendez was a public official.
9 The term "public official" for these counts includes a member
10 of Congress, as well as an officer or employee or person acting
11 for or on behalf of the United States or any department,
12 agency, or branch of government thereof, including the District
13 of Columbia, and any official function under or by authority of
14 any such department, agency, or branch of government.

15 That's a lot of words, ladies and gentlemen. But I
16 can cut through it. I instruct you, as a matter of law, that a
17 United States Senator is a public official. All right. That's
18 taken care of. That's my instruction. You don't have to
19 deliberate about that. So the first element is taken care of
20 in your deliberations, because I've instructed you that a
21 United States Senator is a public official. And you know from
22 the evidence here that Mr. Menendez is a United States Senator.

23 Now let's turn to the second element. The second
24 element is that Mr. Menendez, directly or indirectly, demanded,
25 sought, received, accepted, or agreed to receive something of

O7C3MEN1

Charge

1 value, or for another person or entity at his direction or for
2 his indirect benefit to receive something of value.

3 Here the indictment alleges that Menendez, both
4 directly and through his wife Nadine Menendez, and you know
5 that before they were married her name was Nadine Arslanian,
6 demanded, sought, received, accepted, or agreed to accept a
7 thing of value or multiple things of value as alleged in the
8 indictment.

9 Under the law, seeking or agreeing to receive a bribe
10 is just as much a violation of the statute as actually
11 receiving one. All right? His agreement, if you find there to
12 be one, to receive a bribe or to seek to receive a bribe, is
13 just as much a violation as if he actually received one. The
14 law makes no distinction between demanding, seeking, receiving,
15 accepting, or agreeing to receive a bribe.

16 You need not find that the defendant you are
17 considering did all of these things. If you find that the
18 evidence proves the defendant you are considering did at least
19 one of those things, then the second element is satisfied.

20 "A thing of value" includes things possessing
21 intrinsic value, whether tangible or intangible, that the
22 person giving or offering or the person demanding or receiving
23 considers to be worth something. It is not necessary that the
24 thing of value be given at all, or if given, that it be given
25 directly to the public official. Rather, it is sufficient that

O7C3MEN1

Charge

1 the defendant you are considering understood or believed that
2 the thing of value was demanded, sought, received, accepted, or
3 agreed to be received by a family member or another person or
4 entity at the public official's direction or with the public
5 official's approval or for that public official's indirect
6 benefit.

7 Now, again remember, ladies and gentlemen, that I've
8 told you always use your common sense here. There are a lot of
9 words there, and I want you to follow the words. But you know
10 what a thing of value is. Here the words, and again, you
11 should follow the words, but it's common sense as to what a
12 thing of value is.

13 Let's turn to the third element. The third element is
14 that Mr. Menendez engaged in a quid pro quo. There has been a
15 lot of talk about a quid pro quo. The third element is that
16 Mr. Menendez engaged in a quid pro quo transaction in which he,
17 directly or indirectly, demanded, sought, received, accepted,
18 or agreed to receive something of value or for another person
19 or entity at Mr. Menendez's direction or for his indirect
20 benefit to receive something of value, in return for being
21 influenced in the performance or non-performance of an official
22 act.

23 All right. I'll tell you what an official act is,
24 then I'll tell you what a quid pro quo is.

25 An official act means any decision or action on any

O7C3MEN1

Charge

1 action or matter that may at any time be pending or that may by
2 law be brought before any public official in his official
3 capacity or in his place of trust. I've already defined public
4 official.

5 An official act must involve a decision or action on a
6 specific question or matter. Thus, you must find two distinct
7 requirements are met to find an official act. First, there
8 must be a question or matter pending before a public official;
9 and second, there must be a decision or action on that question
10 or matter.

11 The question or matter must involve a formal exercise
12 of governmental power that is similar in nature to a lawsuit
13 before a court, a determination before an agency, or a hearing
14 before a committee. The question or matter must be something
15 specific and focused that is pending or may by law be brought
16 before any public official. "May by law be brought" means
17 something within the specific duties of an official's
18 position -- the function conferred by the authority of that
19 official's office. It also means that the question or matter
20 must be something relatively circumscribed and concrete. The
21 kind of thing that might be put on an agenda or tracked for
22 progress and checked off as complete. It must be something
23 that may by law be brought before a public official or may at
24 some time be pending before a public official, but not
25 necessarily the official who is alleged to have demanded,

O7C3MEN1

Charge

1 received, or accepted a bribe.

2 To qualify as an official act, the public official
3 must make a decision or take an action on the applicable
4 question or matter, or agree to do so. The decision or action
5 does not need to be specifically described in any law, rule, or
6 job description to be considered by you to be an official act.

7 The decision or action may include using one's
8 official position to exert pressure on another official to
9 perform or not perform an official act. It may also include
10 using one's official position to provide advice to another,
11 knowing or intending that such advice will form the basis for
12 an official act by another.

13 However, not every action taken by a public official
14 qualifies as an official act. Some examples of actions that
15 are not without more official acts are setting up a meeting --
16 these are things that are not official acts -- setting up a
17 meeting isn't an official act. Talking with a lobbyist or
18 another official isn't an official act. Organizing an event,
19 expressing support for an action, decision, or idea, without
20 more, those actions by themselves do not constitute a decision
21 on a question or matter and are therefore not official acts.

22 That is not to say that sort of activity is not
23 relevant. For example, such activity may be evidence of an
24 agreement to take official acts or to advise or pressure
25 another official to take official acts.

O7C3MEN1

Charge

1 What's an official act, ladies and gentlemen? It's
2 for you, because it is a fact issue. You will decide what an
3 official act is in the context of these charges.

4 Bribery involves an exchange of a thing or things for
5 official action by a public official. In other words, a quid
6 pro quo, which is Latin for this for that or these for those.

7 I'm going to be using it when I talk to you about the
8 bribery charges, and when I talk to you about the honest
9 services wire fraud charges, and when I talk to you about the
10 extortion charges.

11 The government has to prove that the defendant you are
12 considering demanded, sought, received, or agreed for a public
13 official to receive a thing of value in exchange for the
14 promise or performance or non-performance of an official act.
15 To prove a quid pro quo, the government must show both (1)
16 there was a particular question or matter on which the official
17 promised to act in exchange for the thing of value and (2) that
18 the particular question or matter was identified and agreed
19 upon at the time the public official, here Mr. Menendez,
20 accepted or agreed to accept the payment or benefit.

21 While the government is not required to prove that the
22 particular act of influence was identified at the time the
23 public official accepted or agreed to accept the payment or
24 benefit, it is not sufficient if the government only shows that
25 a public official simply promised to take some or any official

O7C3MEN1

Charge

1 action. The government must prove at a minimum that the public
2 official promised to take official action on a particular
3 question or matter as the opportunity to influence that same
4 question or matter arose.

5 A quid pro quo must be explicit. It has to be clear
6 and unambiguous. But it does not have to be expressed or
7 stated. If it had to be expressed or stated, the law could be
8 easily frustrated by knowing winks and nods. You know,
9 wink-wink, nod-nod. The solicitation or receipt of a thing of
10 value in return for an official act can be implied from words
11 and actions, so long as you find that the defendant you are
12 considering understood at the time that a thing of value was
13 being sought or given or received in exchange for the promise
14 or agreement of a public official to be influenced in the
15 performance or non-performance of an official act.

16 It is not necessary that the public official in fact
17 performed or had the actual authority or ability to perform the
18 act which the defendant you are considering promised or sought
19 the public official to perform.

20 Bribery requires an intent to effect an exchange of
21 money or other thing of value for official action. But each
22 payment may not be correlated with a specific official act.
23 The requirement that there be payment of a thing of value in
24 return for the agreement to perform an official act is
25 satisfied so long as the evidence shows it is a course of

O7C3MEN1

Charge

1 conduct of things of value flowing to a public official in
2 exchange for official action -- or a pattern of official
3 actions -- on a particular question or matter to be influenced.

4 In other words, the intended exchange in bribery can
5 be this for these or these for these. It doesn't have to be
6 just this for that. It is not necessary for the government to
7 prove that the public official intended to perform a set number
8 of official acts or any in return for the payments.

9 Also, because people rarely act for a single purpose,
10 the government is not required to prove that the defendant you
11 are considering acted solely in return for a thing of value.
12 This element can be satisfied, regardless of whether the
13 parties to the exchange had a prior relationship, nor does it
14 matter who initiated the exchange.

15 Please note that although I'll refer to official acts,
16 this element can be satisfied if the bribe was demanded or
17 sought or received in exchange for influencing the public
18 official to refrain from taking an official act.

19 Put differently, a quid pro quo can either involve
20 taking an official act that is beneficial to the payor or it
21 can also involve refraining from performing an official act
22 that would be detrimental to the payor.

23 I'll refer to both as official acts. So you can agree
24 to take an official act and you can agree to refrain from
25 taking an official act.

O7C3MEN1

Charge

1 Keep in mind that in considering this element, it is
2 whether the defendant you are considering intended for a public
3 official to demand or receive a bribe in return for being
4 influenced in the performance of an official act that is
5 important, not what actually happened later. It is not a
6 defense that the public official would have performed the
7 particular official act without the influence of a thing of
8 value.

9 In other words, it's not a defense that had there been
10 no bribe, the official might have taken the same action anyway.
11 Or that the acts or promises sought or taken were lawful,
12 desirable, or beneficial to the public.

13 The defendant you are considering is guilty of
14 demanding or accepting or agreeing to accept a thing of value,
15 even if he would have, for other reasons, taken the same action
16 for which that thing of value was sought, demanded, or received
17 or agreed to be received.

18 Not every gift or thing of value given to a public
19 official constitutes a bribe. Again, always use your common
20 sense here. Under the law, giving a gift or thing of value to
21 a public official to cultivate friendship or to build goodwill
22 in hopes of ultimately affecting one or more unspecified
23 official acts now or in the future is not federal bribery. For
24 bribery there has to be a quid pro quo, a specific intent to
25 give or receive something of value, in exchange for an official

O7C3MEN1

Charge

1 act as I've defined for you a few moments ago.

2 Payments, sometimes referred to as goodwill gifts,
3 made with no more than some generalized hope or expectation of
4 ultimate benefit on the part of the donor, are thus not bribes,
5 since they were made neither with the intent to engage in a
6 relatively specific quid pro quo with an official, nor because
7 of a specified official act. As to each defendant, consider
8 whether that defendant intentionally gave or received the gift
9 as part of an intended exchange for an official act by
10 Mr. Menendez.

11 Now, let's turn to that fourth element. Corrupt
12 intent. Again, this is all common sense when you follow these
13 instructions.

14 Corrupt intent means to act with an improper motive or
15 purpose. The defendant must have demanded, sought, received,
16 or agreed to receive a thing of value with the improper motive
17 or purpose of a public official being corruptly influenced in
18 the performance or non-performance of an official act.

19 This involves conscious wrongdoing or, as it has
20 sometimes been described, a bad state of mind. Although the
21 defendant need not be aware of the specific law that he is
22 charged with violating.

23 The party demanding or receiving a thing of value may
24 have a different intent from the party giving it or any other
25 party involved in an alleged offense. Therefore, you must

O7C3MEN1

Charge

1 decide the intent of the receiver separately from the intent of
2 the giver or from the intent of other parties involved in the
3 alleged offense. In considering this element, remember that it
4 is the public official's intent to be influenced which is
5 important. Not the public official's subsequent actions, if
6 indeed he took any actions.

7 It is no defense that the defendant acted because of
8 both proper and improper motives, and the defendant you are
9 considering may have a corrupt intent, even if he possessed
10 both an unlawful intent to seek or receive a bribe, and some
11 other non-criminal intent.

12 Remember, direct proof of intent is not required.
13 Corrupt intent by an individual may be established by
14 circumstantial evidence of that person's state of mind,
15 including proof of a person's words and conduct and the logical
16 inferences that can be drawn from that proof.

17 (Continued on next page)
18
19
20
21
22
23
24
25

O7cWmen2

Charge

1 THE COURT: Now we'll turn to Counts Six and Twelve,
2 which are also substantive counts: Offer or payment of a bribe
3 to a public official.

4 We've been discussing the charges related to a public
5 official demanding or accepting a bribe, and now I'll turn to
6 the charges related to offering or paying a bribe. You see
7 those were one side of the coin. This is the other side of the
8 coin.

9 Counts Six and Twelve charge Hana and Daibes with
10 offering or paying bribes to a public official. So you see the
11 difference. Five and Eleven had to do with demanding,
12 receiving or accepting a bribe on the part of a public
13 official. And now Six and Twelve are the other side of the
14 transaction, offering or paying a bribe to a public official.

15 Count Six alleges that from approximately 2018 through
16 approximately 2023, Hana and Daibes offered and provided bribes
17 to Menendez, who, as you know, was a public official, directly
18 and through Nadine Menendez, in exchange for certain official
19 actions benefiting both the government of Egypt and Hana.
20 That's Six.

21 Twelve alleges that, during the same time period,
22 Daibes offered and gave bribes to Menendez, directly and
23 through Nadine, in exchange for certain official actions to
24 benefit Daibes and to assist Daibes by acting for the benefit
25 of the government of Qatar.

O7cWmen2

Charge

1 In order to establish that Hana and Daibes are guilty
2 of the crime charged in Count Six or that Daibes is guilty of
3 the crime charged in Count Twelve, the government has to prove
4 beyond a reasonable doubt here, too, four elements.

5 First, that on approximately the dates at issue, the
6 defendant you are considering, offered, promised or gave money
7 or something else of value to or for the benefit of a public
8 official;

9 Second, that the person who received or benefited from
10 the thing of value was then a public official;

11 Third, that the defendant did so to influence an
12 official act; and

13 Fourth, that he acted with corrupt intent.

14 All right. We'll do the first element.

15 The first element is that the defendant you are
16 considering offered, promised or gave money or something else
17 of value to a public official or for the benefit of a public
18 official.

19 The law does not distinguish between offering,
20 promising, giving or agreeing to give a thing of value. The
21 simple offer or promise of a thing of value is just as much a
22 crime as the actual giving of the thing of value. All right?
23 Offering it is just as much a crime and actually giving it.

24 It's not necessary for the payment to have been made
25 at all, or, if made, that it be made directly to the public

O7cWmen2

Charge

1 official, but the evidence must establish that the defendant
2 you are considering understood or believed that the payment or
3 thing of value was offered, promised or given to a family
4 member or another person or entity at the public official's
5 direction or with the public official's approval or for that
6 public official's indirect benefit.

7 The second element the government has to prove beyond
8 a reasonable doubt is that Mr. Menendez was a public official.
9 And I've already instructed you that, as a matter of law, a
10 United States senator is indeed a public official.

11 The third element is that the defendant you are
12 considering gave, promised, or offered money or some other
13 thing of value to a public official or, as noted above, to
14 another person or entity at the public official's direction or
15 for the public official's indirect benefit, to influence any
16 official act.

17 Because I have already instructed you regarding what
18 official act and *quid pro quo* mean, I'm not going to do so
19 again. Apply the same instructions that I gave you earlier
20 regarding these terms.

21 And they'll come up again and I'll refer you back to
22 the instruction. These instructions are long enough without my
23 constantly repeating these items. But they're all important.

24 In considering this element, remember it is the
25 defendant's intent to influence the public official's action,

O7cWmen2

Charge

1 and not the subsequent actions of the public official, that is
2 important. Thus, the government does not have to prove that
3 the public official accepted the bribe or did the act sought.
4 It is not necessary that the public official even had the power
5 or authority to perform the act that the defendant sought. For
6 the same reason, it does not matter that the defendant intended
7 to influence an official act that was lawful, or even desirable
8 or beneficial to the public interest.

9 The fourth element is that the defendant acted with
10 corrupt intent.

11 I've already instructed you regarding corrupt intent,
12 and apply those instructions here.

13 You have been instructed that your verdict, whether
14 it's guilty or not guilty, must be unanimous. Remember I've
15 told you that a couple of times. You have to be unanimous on
16 each count against each defendant, one way or the other.

17 Count Six alleges that Hana and Daibes committed
18 bribery regarding actions to benefit Hana and Egypt. Here, the
19 defendants contend that the government has alleged that the
20 defendants engaged in two bribery schemes: the first relating
21 to payments to obtain certain benefits for Egypt, including
22 foreign military sales and financing; and the second to protect
23 a business monopoly granted to IS EG Halal. The government
24 contends that the defendants engaged in a single bribery
25 scheme. You cannot convict any of the defendants on these

O7cWmen2

Charge

1 counts unless you are unanimous that the government has proven
2 its case beyond a reasonable doubt as to the same alleged
3 bribery scheme.

4 For example, if half the jury finds beyond a
5 reasonable doubt only that the charged defendants engaged in
6 bribes relating to paying foreign military sales and financing,
7 while the other half of the jury finds beyond a reasonable
8 doubt only that they engaged in bribes relating to IS EG Halal,
9 there would be no unanimity as to the theory of criminality,
10 and the jury must find the defendants not guilty.

11 The government does not have to prove all of these
12 theories of liability for you to return a guilty verdict here.
13 Proof beyond a reasonable doubt on one liability theory is
14 enough. But in order to return a guilty verdict, all of you
15 must agree unanimously that the same theory has been proved.

16 Now we'll turn to a grouping of other substantive
17 crimes, and this grouping is called honest services wire fraud.
18 It's Counts Seven, Nine and Thirteen. And again, while you're
19 deliberating, if you want to follow this charge, you can just
20 go to Counts Seven, Nine and Thirteen on the verdict sheet.

21 Seven, Nine and Thirteen charge certain defendants
22 with committing honest services wire fraud.

23 Seven charges from approximately 2018 to approximately
24 2023, Menendez, Hana and Daibes participated in a scheme to
25 defraud the public, by paying bribes to Menendez, in exchange

O7cWmen2

Charge

1 for Menendez taking or not taking certain actions that deprived
2 the public of the right to have Menendez's honest services in
3 connection with certain actions benefiting the government of
4 Egypt and Hana.

5 Nine alleges, from approximately that same period,
6 Menendez and Hana participated in a scheme to defraud the
7 public, by paying bribes to Menendez, in exchange for Menendez
8 taking or not taking certain actions that deprived the public
9 of the right of Menendez's honest services in connection with
10 certain actions benefiting an individual named José Uribe and
11 Uribe's associates.

12 Thirteen alleges, from approximately that same period,
13 Menendez and Daibes participated in a scheme to defraud the
14 public, by paying bribes to Menendez, in exchange for Menendez
15 taking or not taking certain actions that deprived the public
16 of the right of Menendez's honest services in connection with
17 certain actions to benefit Daibes and to assist Daibes by
18 acting for the benefit of Qatar.

19 Now let's go to the elements.

20 In order to establish the offense of honest services
21 fraud, the government must prove the following four elements
22 beyond a reasonable doubt:

23 First, that the defendant you are considering
24 knowingly devised or participated in a scheme to defraud the
25 public of its right to the honest services of Robert Menendez

O7cWmen2

Charge

1 as a U.S. senator and/or the chairman or ranking member of the
2 Senate Foreign Relations Committee through bribery;

3 You'll remember, ladies and gentlemen, that during the
4 trial the Senate Foreign Relations Committee was referred to
5 either by the full name or referred to as the SFRC.

6 Second, that the defendant acted knowingly with an
7 intent to defraud;

8 Third, the scheme or artifice to defraud involved a
9 material misrepresentation, omission, false statement, false
10 pretense or concealment of fact; and

11 Fourth, that in advancing, or furthering, or carrying
12 out the scheme to defraud, the defendant transmitted, or caused
13 to be transmitted, any writing, signal or sound by means of an
14 interstate or international wire communication.

15 The first element of honest services wire fraud is
16 that the defendant knowingly devised or participated in a
17 scheme or artifice to defraud the public of its intangible
18 right to a public official's honest services through a bribery.

19 A public official owes the duty of honest and faithful
20 service to the public he serves. Public officials owe a
21 fiduciary duty to the public. When a public official seeks or
22 obtains a corrupt payment for himself or a third party in
23 exchange for official action, that official has breached his
24 duty of honest service.

25 A scheme or artifice is simply a plan to accomplish

O7cWmen2

Charge

1 some goal. I'll refer to that as a scheme. It's simply a plan
2 to get to some goal.

3 A scheme to defraud is any plan, device or course of
4 action to deprive another of the intangible right of honest
5 services by means of false or fraudulent pretenses,
6 representations or promises reasonably calculated to deceive
7 persons of average prudence.

8 To prove that a defendant engaged in a scheme to
9 deprive the public of the honest services of a public official
10 through bribery, the government must show a *quid pro quo*; that
11 is, an agreement to exchange a thing or things of value for
12 official action by a public official.

13 I previously told you what a *quid pro quo* is, and the
14 instructions described earlier on *quid pro quo* apply here. A
15 defendant can participate in bribery even if he did not
16 initiate the payments, as long as he participated in the scheme
17 knowing that the payment was offered, demanded or made in
18 exchange for influencing or seeking to influence the public
19 official's official actions.

20 Now, I told you earlier what an official act is.
21 Remember I listed what an official act is, and then I listed
22 certain things that were not official acts, and I told you you
23 decide what an official act is in the context of this case.

24 The instructions earlier about what an official act is
25 apply here but with one difference. In the bribery counts --

O7cWmen2

Charge

1 Five, Six, Eleven and Twelve -- an official act is one
2 performed or caused by a public official, which includes
3 federal official. For the purposes of honest services wire
4 fraud, an official act may also be performed or caused by a
5 nonfederal government official. In all other respects,
6 however, an official act for the purposes of honest services
7 wire fraud is the same as an official act for the purposes of
8 bribery. In particular, just like with bribery, an official
9 act for the purposes of honest services wire fraud may include
10 using one's official position to exert pressure on another to
11 perform or not perform an official act.

12 So, for example, the use of one's official position to
13 exert pressure on a state or local official to perform an
14 official act is itself official action for the purposes of
15 honest services wire fraud. Similarly, using one's official
16 position to provide advice to a state or local official,
17 knowing or intending that such advice will form the basis for
18 an official act by a state or local official, is official
19 action for the purposes of honest services wire fraud.

20 The second element of honest services wire fraud is
21 that the defendant participated in the scheme to defraud
22 knowingly and with a specific intent to defraud.

23 A person acts knowingly if he acts intentionally and
24 voluntarily and not because of ignorance, mistake, accident or
25 carelessness.

O7cWmen2

Charge

1 Specific intent to defraud means to act knowingly and
2 with the specific intent to deceive for the purpose of
3 depriving the public of its right to a public official's honest
4 services. In other words, the deceit may consist of concealing
5 or helping another to conceal the things of value that the
6 public official has solicited or received or the public
7 official's implicit false pretense that he is faithfully
8 performing his official duties, including the duty not to
9 accept payments or things of value in exchange for performing,
10 or promising to perform, an official act.

11 Direct proof of knowledge and fraudulent intent is
12 almost never available, ladies and gentlemen. It would be a
13 rare case where it could be shown that a person wrote or stated
14 that as of a given time in the past he committed an act with
15 fraudulent intent. That's, again, logical. Common sense tells
16 you that. Such direct proof is not required. The ultimate
17 facts of knowledge and criminal intent, although subjective,
18 may be established by circumstantial evidence, based on
19 someone's outward manifestations, such as his words, his
20 conduct, his acts, and all the surrounding circumstances
21 disclosed by the evidence in this case and the rational or
22 logical inferences that you may draw from them. Circumstantial
23 evidence, if believed, is of no less value than direct
24 evidence. You know that, because I've told you that several
25 times.

O7cWmen2

Charge

1 In either case -- that is, in the case of
2 circumstantial evidence and in the case of direct evidence --
3 the essential elements of the crime must be established beyond
4 a reasonable doubt, and you know that also.

5 The third element the government must prove beyond a
6 reasonable doubt is that the scheme or artifice to defraud
7 involved a material misrepresentation, false statement, false
8 pretense or concealment of fact.

9 A representation, statement, false pretense, omission
10 or concealment of fact is material if it would naturally tend
11 to lead or is capable of leading a reasonable person to change
12 his conduct or is capable of influencing a decision or action
13 by the public. Put another way, a material fact is one that
14 would be expected to be of concern to a reasonable and prudent
15 person in relying upon the representation or statement in
16 making a decision.

17 It is not necessary that the government prove that the
18 public official actually made a decision or took any action or
19 suffered any financial or other measurable loss from the
20 alleged scheme. And it is not necessary for the government to
21 prove that the defendants realized any gain from it. It is
22 sufficient for the government to prove that the public did not
23 receive the honest and faithful services of Robert Menendez, as
24 I explained them above.

25 The fourth and final element that the government must

O7cWmen2

Charge

1 establish beyond a reasonable doubt is that interstate or
2 international wire communications were used in furtherance of
3 the scheme to defraud.

4 Wire communications include telephone calls, faxes,
5 emails, texts and wire transfers between banks or other
6 financial institutions or companies. The wire communications
7 must pass between two or more states or between a state and the
8 District of Columbia or from outside the United States into the
9 United States or from into the United States -- I'm sorry, or
10 vice versa. Let me do that again: Or from outside the United
11 States into the United States or vice versa.

12 It's not necessary for the defendant you are
13 considering to directly or personally use any wire facility, or
14 cause any wire, as long as such use is reasonably foreseeable
15 in the execution of the alleged scheme to defraud.

16 In this regard, it would be sufficient to establish
17 this element of the crime if the evidence justifies a finding
18 that the defendant caused or expected the wires to be used by
19 others, and this does not mean that the defendant himself must
20 have specifically authorized others to use a wire facility.
21 When one does an act with knowledge that the use of the wire
22 will follow in the ordinary course of business or where such
23 use of the wires can reasonably be foreseen, even though not
24 actually intended, then he or she causes the wires to be used.

25 The use of the wire need not be fraudulent. The

O7cWmen2

Charge

1 material wired need not contain any fraudulent representation.
2 It doesn't even have to involve any request for money. The use
3 of the wires, however, must further or assist in carrying out
4 the scheme to defraud.

5 If you find that the wire communication was reasonably
6 foreseeable and that the interstate wire use charged in the
7 indictment took place, then this element is satisfied even if
8 it was not foreseeable that the wire communication would cross
9 state or national lines.

10 If you find that wire communications were used in
11 furtherance of the scheme to defraud, you must be unanimous as
12 to at least one of the particular interstate or international
13 wire communications in furtherance of the scheme had occurred.

14 You've been instructed that your verdict, whether it's
15 guilty or not guilty, must be unanimous.

16 Count Seven alleges that the defendants committed
17 honest services wire fraud to benefit Hana and Egypt. Just as
18 with Count Six, and I've told you that already, the defendants
19 contend that the government has alleged that the defendants
20 engaged in two bribery schemes: the first relating to payments
21 to obtain certain benefits for Egypt, including foreign
22 military sales and financing; and the second to protect the
23 business monopoly granted to IS EG Halal.

24 The government contends that the defendants engaged in
25 a single bribery scheme. You cannot convict any of the

O7cWmen2

Charge

1 defendants on these counts unless you are unanimous that the
2 government has proven its case beyond a reasonable doubt as to
3 the same alleged bribery scheme. Just as I've told you with
4 Count Six, the government does not have to prove all of these
5 theories of liability in order for you to return a verdict of
6 guilty here. Proof beyond a reasonable doubt on one liability
7 theory is enough to convict, but in order to do so, all of you
8 must agree unanimously that that same theory has been proven.

9 Now we'll go to another grouping. We're marching
10 through the charge.

11 This grouping is Counts Eight, Ten and Fourteen,
12 extortion under color of official right. They charge Menendez
13 with obtaining one or more things under the color of official
14 right.

15 Count Eight relates to the alleged scheme by Menendez
16 to obtain things of value from Hana and Daibes in exchange for
17 certain official actions benefiting the government of Egypt and
18 Hana.

19 Ten relates to the alleged scheme by Menendez to
20 obtain things of value from Hana and Uribe in exchange for
21 certain official actions benefiting Uribe and his associates.

22 Fourteen relates to the alleged scheme by Menendez to
23 obtain things of value from Daibes in exchange for certain
24 official actions benefiting Daibes and to assist Daibes by
25 acting for the benefit of the government of Qatar.

O7cWmen2

Charge

1 The crime of extortion under color of official right
2 is the use of one's position as a public official, or the
3 authority of public office, to obtain money for oneself, or for
4 another person, knowing the thing of value was made in return
5 for official acts.

6 In the context of extortion under color of official
7 right, it is the public officer's official power that supplies
8 the necessary element of coercion, and the wrongful use of
9 official power need not be accompanied by actual or threatened
10 force, violence or fear.

11 Now let's go to the elements of extortion under color
12 of official right.

13 The government has to prove beyond a reasonable doubt
14 four elements:

15 First, that Menendez was a public official or held
16 public office during the relevant time period;

17 Second, that he obtained property for himself or
18 someone else not legitimately due him as a public official;

19 Third, that the property was given to Menendez or
20 someone else with the consent of the giver in exchange for
21 official action by Menendez and that Menendez knew that the
22 property was given in exchange for official action;

23 Fourth, that interstate commerce, or an item moving in
24 interstate commerce, was delayed, obstructed or affected in any
25 way or degree.

O7cWmen2

Charge

1 All right. Let's unpack each of those four. The
2 first one you know by now.

3 The first element is that the government has to prove
4 beyond a reasonable doubt that, at the relevant time charged,
5 Menendez was a public official or held public office. That you
6 know.

7 The second element is that he obtained property for
8 himself or for someone else that was not legitimately owed the
9 public office that he occupied; that is, that it was not
10 legitimately owed to Menendez in his capacity as a United
11 States senator.

12 The term "property" includes money and tangible or
13 intangible things of value that are capable of being
14 transferred; that is, capable of being given from one person to
15 another.

16 Here's another example, ladies and gentlemen. You
17 know what property is. This charge has a lot of words, and you
18 should follow them, but you know what property is.

19 The government does not have to prove that the
20 property was given to Menendez directly or that the property
21 personally benefited Menendez.

22 Again, it all makes sense.

23 Let's turn to the third element.

24 The third element the government must prove beyond a
25 reasonable doubt is Menendez used the authority of his public

O7cWmen2

Charge

1 office to obtain the property for himself or for someone else
2 and that the property was given, at least in part, in exchange
3 for official action by Menendez.

4 This element requires the existence of a *quid pro quo*.
5 I've defined that earlier.

6 To prove a *quid pro quo*, the government must prove
7 that Menendez obtained the property to which he was not
8 entitled by virtue of his public office, knowing that it was
9 given in exchange for official acts. The government must also
10 prove that the party giving the payment was motivated, at least
11 in part, by the expectation that, as a result of the payment,
12 Menendez would perform or decline to perform official acts for
13 the benefit of that party and that Menendez was aware of that
14 party's motivation.

15 Again, as I charged you earlier, it's not necessary
16 that Menendez or the person giving the property state the *quid*
17 *pro quo* in express or stated terms. It can be implied from
18 words and actions, because otherwise the law's effect could be
19 frustrated by knowing winks and nods. But a *quid pro quo* must
20 nonetheless be explicit; that is, it must be clearly and
21 unambiguously made.

22 This element can be satisfied even if the party giving
23 the payment initiated the *quid pro quo* and even if that party
24 and Menendez had a friendly prior relationship. If you find
25 either to be the case, however, each is a factor that you

O7cWmen2

Charge

1 should consider in deciding whether the party giving the
2 payment and Robert Menendez intended to enter into a *quid pro*
3 *quo*. The government's burden is to prove that the promise or
4 performance of official acts was at least a part of the
5 motivation for the other party to give over the payment and at
6 least part of what Menendez understood was motivating the other
7 party. Thus, if you find that the transfer or acceptance of
8 payment was for entirely different reasons, stemming from
9 friendship or any other innocent reason, then this element will
10 not have been proven.

11 The government does not need to prove that Menendez
12 could or actually did perform any specific official act on
13 behalf of the party giving the property. A public official
14 need not have actual or final authority over the official act
15 sought by a payor as long as the payor reasonably believed that
16 the public official had influence, power or authority over the
17 official act sought by the payor and paid based, at least in
18 part, on that belief. If Robert Menendez did take official
19 action on the part of the payor, it is not a defense if the
20 actions he took were desirable or beneficial or that he would
21 have taken the same action regardless of the receipt of a
22 payment from the other party. The extortion laws, like the
23 bribery and honest services wire fraud laws, are concerned with
24 the manner in which public officials take or agree to take or
25 to seek to cause another to take official action, not with

O7cWmen2

Charge

1 whether the official actions are good or bad.

2 I have mentioned several times that Counts Eight, Ten
3 and Fourteen involve payments in exchange for an official act.
4 I already defined that term for you earlier in connection with
5 Counts Seven, Nine and Thirteen, the honest services wire fraud
6 counts, and it has the same meaning here. That is, like with
7 the honest services wire fraud counts, the official act must
8 involve a nonfederal official, unlike in the bribery counts,
9 which relate only to official acts by federal officials.

10 The fourth element the government must prove beyond a
11 reasonable doubt for Counts Eight, Ten and Fourteen is that a
12 defendant's action or an action that he caused affected or
13 could affect interstate commerce in any way or degree. If you
14 decide that Menendez obtained property under color of official
15 right, you must then decide whether this action did affect, or
16 would have affected, commerce between two or more states or
17 between a state and the District of Columbia.

18 Commerce between two or more states just means that
19 items are bought and sold by entities located in different
20 states or between a state and the District of Columbia.

21 If you decide that there was any effect at all on
22 interstate commerce, then that is enough to satisfy this
23 element. The effect can be minimal. For example, if a payment
24 obtained by a defendant traveled or went through interstate
25 commerce, that would be a sufficient effect on interstate

O7cWmen2

Charge

1 commerce. Even a potential or subtle effect on commerce will
2 suffice.

3 You do not have to decide whether the effect on
4 interstate commerce was harmful or beneficial to a particular
5 person or business, or to commerce in general. In addition, a
6 defendant need not have intended or anticipated or even known
7 of an effect on interstate commerce. You can find this element
8 has been satisfied if the effect on interstate commerce would
9 have been a natural consequence of the actions he agreed with
10 others to undertake.

11 In addition, if you find beyond a reasonable doubt
12 that the target of the extortion related to something that
13 moved in interstate or foreign commerce, then this element will
14 have been met.

15 All right. Now let's go to the last group of
16 substantive instructions.

17 MR. MONTELEONI: Your Honor, might this be a good time
18 for a morning break?

19 THE COURT: You're suggesting to me that it is. I can
20 tell.

21 Let's do it. All right. Ten minutes, ladies and
22 gentlemen. My voice definitely needs the break.

23 (Jury not present)

24 THE COURT: Ten minutes.

25 MR. RICHENTHAL: Two quick things, your Honor.

O7cWmen2

Charge

1 THE COURT: You may be seated in the courtroom.

2 MR. RICHENTHAL: Two quick things, your Honor. We
3 could handle it after a short break if folks want to go to the
4 restroom or something.

5 First, we think the Court may have very modestly
6 misspoken just now on something.

7 THE COURT: All right. Let's deal with it.

8 MR. RICHENTHAL: That's the first, and the second is a
9 separate issue.

10 So on the first, on page 84 of the written charge, the
11 last sentence that is on that page --

12 THE COURT: Yes.

13 MR. RICHENTHAL: -- correctly says, "the official act
14 may involve." I think the Court, at least according to Live
15 Note, said orally "must involve." I think it was just a verbal
16 slip, and again, the written charge is correct, but if I --

17 THE COURT: I understand. Let's see.

18 (Discussion off the record)

19 THE COURT: OK. I will go back and tell them.

20 MR. RICHENTHAL: Just to be clear, multiple members of
21 our team also heard "must."

22 THE COURT: That's all right. That's No. 1. I have
23 no objection to that.

24 MR. RICHENTHAL: But the second issue is unrelated to
25 the specific charge.

O7cWmen2

Charge

1 We think, and forgive us if we're wrong, that the
2 Court may have shifted practices with respect to the courtroom
3 for the jury instruction portions of the trial. We understand
4 that during the trial, obviously the courtroom was physically
5 open; people were free to come and go. There may have been
6 prioritization given to family members or people associated
7 with the parties or the media and deliveries, since the
8 courtroom's been so busy. And of course, there's an overflow
9 and a live connection.

10 We think, just because our paralegals told us -- they
11 may be wrong -- that when jury instructions started, that the
12 CSOs didn't want people reentering the courtroom.

13 THE COURT: Yes.

14 MR. RICHENTHAL: Obviously, the public and the media
15 are here and the overflow room is still working, but that's a
16 shift. We just wanted to make sure we understood that that's,
17 in fact, the Court's shift and make sure that no party has an
18 objection. We think it's fine.

19 THE COURT: OK. I need to keep the movement of people
20 in the courtroom down during a jury charge so that the jury can
21 focus on me. So the compromise was I had my deputy ask the
22 CSOs to allow anyone to leave who wanted but not to have people
23 come and to make sure that everybody could go to the overflow
24 courtroom, which they have.

25 Now, if anyone has any objection to that, I'll alter

O7cWmen2

Charge

1 it.

2 Is there any objection to that procedure?

3 MR. RICHENTHAL: The government has no objection. I
4 had a technical problem with a computer. I wanted a paralegal
5 to be able to enter, and my understanding --

6 THE COURT: Well, I would have thought they would have
7 let them.

8 MR. RICHENTHAL: Yes, that's the only reason I raised
9 it. We have no problem. Frankly, it makes sense, but we
10 wanted to make sure that the defense has no problem that this
11 change has occurred during the charge.

12 THE COURT: If you'll stop talking, they'll say they
13 have no problem.

14 MR. RICHENTHAL: I'm sorry.

15 THE COURT: OK.

16 MR. LUSTBERG: No, your Honor. I am familiar with
17 situations where the courtroom doors are locked during these
18 proceedings, so I think this is a perfectly appropriate
19 compromise. We have no objection.

20 THE COURT: Yes. It wasn't locked. Anyone who was
21 here could leave. It was during the charge itself, but I'll
22 change it right now since there seems to be an issue.

23 Any problem?

24 MR de CASTRO: No, Judge.

25 THE COURT: Mr. Fee.

O7cWmen2

Charge

1 MR. FEE: Just so that the family members can come in.

2 THE COURT: Oh, yes, family members.

3 MR. FEE: Today was the first time they were actually
4 delayed. I thank the government for raising it.

5 THE COURT: You know what? I'll change my
6 instructions to the CSOs, that people can come and go as they
7 please during the charge.

8 Mr. Fee, I wanted on the record that you had no
9 objection to the way it was set up.

10 MR. FEE: I didn't know it. I'm not going to make an
11 issue out of it. I don't object to it. I appreciate the
12 change.

13 THE COURT: Yes. Sure, we'll do it that way.

14 And at all times the overflow courtroom was available
15 with a live feed.

16 All right.

17 MR. RICHENTHAL: And it still is available today as
18 well.

19 THE COURT: Yes.

20 All right. Thank you.

21 Take a few minutes.

22 (Recess)

23 (Jury present)

24 THE COURT: Please be seated in the courtroom.

25 Ladies and gentlemen, you'll remember that

O7cWmen2

Charge

1 Mr. Monteleoni said, your Honor, it may be a good time for a
2 break. Those were his words, but what he meant was, your
3 Honor, we think you made a mistake and we want to tell you
4 about it. And indeed I did.

5 For those who are following along, on page 84, in the
6 last paragraph, the last sentence says: "That is, like the
7 honest services wire fraud counts, the official act may involve
8 a nonfederal official". I misspoke. I said "must involve a
9 nonfederal official." It's "may," but let me give you that
10 paragraph again just so it's clear.

11 We're at the bottom of page 84.

12 I have mentioned several times that Counts Eight, Ten
13 and Fourteen involve payments in exchange for an official act.
14 I already defined that term for you earlier in connection with
15 Counts Seven, Nine and Thirteen, the honest services wire fraud
16 counts, and it has the same meaning here. That is, like with
17 the honest services wire fraud counts, the official act may
18 involve a nonfederal official, unlike in the bribery counts,
19 which relate only to official acts by federal officials.

20 All right. Now, if you're following along, I'll pick
21 it up at the top of page 86.

22 Count Eighteen charges Menendez with obstruction of
23 justice. Specifically, it charges that from approximately June
24 2022 through at least about 2023 -- and you'll note that that
25 time period is slightly different than the time period in the

O7cWmen2

Charge

1 other counts -- Menendez wrote checks and letters falsely
2 characterizing the return of bribe money to Hana and Uribe as
3 repayment for loans, and caused the then-counsel to make false
4 statements regarding the bribe money from Hana and Uribe, in an
5 effort to interfere with the federal investigation of Menendez
6 and others here in the Southern District of New York.

7 This law is designed to prevent a miscarriage of
8 justice resulting from corrupt methods. It is aimed at a
9 variety of means by which the orderly and due process of the
10 administration of justice may be or is endeavored to be
11 impeded, thwarted or corrupted. Success of the endeavor is not
12 an element of the crime. Any corrupt effort, whether
13 successful or not, that is made for the purpose of influencing,
14 obstructing or impeding the due administration of process is
15 condemned.

16 The due administration of justice refers to the fair,
17 impartial, uncorrupted and unimpeded investigation,
18 prosecution, dispositions or trial of any matter, civil or
19 criminal, in the courts of the United States. It includes
20 every step in a matter or proceeding in the federal courts to
21 assure the just consideration and determination of the rights
22 of parties, whether government or individual. Thus, due
23 administration of justice includes, but is not limited to, a
24 federal grand jury proceeding, a grand jury investigation or a
25 federal civil or criminal trial.

O7cWmen2

Charge

1 In order to establish the offense charged in Count
2 Eighteen, the government must prove each of four elements
3 beyond a reasonable doubt:

4 First, that on or about the dates set forth in the
5 indictment, there was a proceeding pending before a federal
6 court or a grand jury;

7 Second, that the defendant you are considering --
8 here, this charge is solely against Menendez -- knew of the
9 proceeding;

10 Third, that the defendant acted to obstruct or impede,
11 or endeavored to obstruct or impede, the proceeding; and

12 Fourth, that the defendant acted with corrupt intent.

13 The first element the government has to prove beyond a
14 reasonable doubt is that on approximately the dates set forth
15 in the indictment -- and remember, all these dates can be
16 approximate -- there was a proceeding pending before a federal
17 court or grand jury.

18 The second element is that the defendant knew that
19 such a proceeding was in progress. In order to satisfy this
20 element, you need only determine that Menendez knew on or about
21 the date charged in the indictment that a criminal case or a
22 grand jury proceeding was in progress. In this regard, you may
23 take into account all of the facts and circumstances
24 surrounding the conduct with which Menendez is charged in
25 determining whether he knew that a criminal case or grand jury

O7cWmen2

Charge

1 proceeding was in progress.

2 The third element in regard to obstruction of justice
3 is that the defendant influenced, obstructed or impeded, or
4 endeavored to influence, obstruct or impede, the proceeding.

5 Endeavor means any effort or any act to obstruct,
6 impede or interfere with the trial or grand jury proceeding.
7 Success of the endeavor is not an element of the crime. The
8 term "endeavor" is designed to reach all conduct which is aimed
9 at influencing, obstructing or impeding the due administration
10 of justice. This element is satisfied if you find that
11 Menendez acted to obstruct, or took action knowing that it had
12 the natural and probable effect of obstructing, the due
13 administration of justice.

14 The final element is that Menendez must have acted
15 corruptly. The word "corruptly" means simply having the
16 improper motive or purpose of obstructing justice. Obstructing
17 justice need not have been the sole motivation for his conduct
18 as long as he acted, at least in part, with that improper
19 purpose. You may consider all the evidence and surrounding
20 circumstances in determining whether Menendez acted corruptly.

21 A defendant's actions can qualify as a corrupt attempt
22 to interfere with a judicial or grand jury proceeding only if
23 the defendant specifically intends to interfere with the
24 proceeding. That specific intent requires knowledge by the
25 defendant that his actions are likely to interfere with the

O7cWmen2

Charge

1 proceeding. In other words, there must be a nexus between the
2 actions and the proceeding. The prosecution must prove that
3 the defendant engaged in conduct directed at the court or grand
4 jury that he believed would have the natural and probable
5 effect of interfering with a proceeding.

6 A defendant's interactions with third parties,
7 including prosecutors, are therefore relevant to this charge
8 only if the defendant knew that those interactions were likely
9 to affect the judicial or grand jury proceeding and
10 specifically intended that result. It is not sufficient that
11 the defendant knew of the proceeding's existence, or even that
12 he hoped or thought it possible that his actions could affect
13 the proceeding.

14 Now let's turn to Sixteen, public official acting as
15 an agent of a foreign principal.

16 It is a crime for any public official to be or to act
17 as an agent of a foreign principal within the meaning of the
18 Foreign Agents Registration Act, which you know is referred to
19 as FARA. Count Sixteen charges Menendez was a public official
20 who was and acted as an agent of the government of Egypt and
21 certain Egyptian officials from approximately 2018 until
22 approximately 2022.

23 FARA requires the registration with the Department of
24 Justice of anyone who is or acts as an agent of a foreign
25 principal. However, a public official cannot act as an agent

O7cWmen2

Charge

1 of a foreign principal, even though someone who is not a public
2 official can if he or she registers with the Department of
3 Justice.

4 All right? People who are not public officials can
5 act as agents of a foreign principal if they register under
6 FARA, but public officials are not allowed to act as an agent
7 of a foreign principal.

8 In order to establish the offense charged in Count
9 Sixteen, the government must prove three elements beyond a
10 reasonable doubt:

11 One, that the defendant was a public official;

12 Two, that he was or acted as an agent of a foreign
13 principal;

14 Third, he acted knowingly.

15 The first element is that Menendez was a public
16 official during the relevant time period. A public official
17 includes a U.S. senator. Again, that's rather straightforward.

18 The second element is that Menendez was or acted as an
19 agent of a foreign principal.

20 The government of a foreign country, such as Egypt, is
21 a foreign principal. OK? The government of Egypt is a foreign
22 principal. Where the government of a foreign country is the
23 pertinent foreign principal, the term "foreign principal"
24 includes the government's agencies, officials, officers and
25 employees.

O7cWmen2

Charge

1 An agent of a foreign principal includes the
2 following:

3 (1) any person who acts as an agent, representative,
4 employee or servant, or any person who acts in any other
5 capacity at the order, request, or under the direction or
6 control, of a foreign principal or of a person any of whose
7 activities are directly or indirectly supervised, directed,
8 controlled, financed or subsidized in whole or in major part by
9 a foreign principal and who directly or through any other
10 principal --

11 (i) engages within the United States in political
12 activities for or in the interests of such foreign principal;

13 (ii) acts within the United States as a political
14 consultant for or in the interests of such foreign principal;
15 or

16 (iii) within the United States represents the
17 interests of such foreign principal before any agency or
18 official of the government of the United States; or.

19 (2) any person who agrees, consents, assumes or
20 purports to act as, or who is or holds himself out to be,
21 whether or not pursuant to contractual relationship, an agent
22 of a foreign principal.

23 As you can see, the government does not have to prove
24 that a person engaged in all of the activities I've set forth
25 above for that person to be an agent of a foreign principal.

O7cWmen2

Charge

1 Engaging in any one of those activities that I set forth above
2 would suffice to make that person an agent of a foreign
3 principal.

4 It would be enough, for example, if the government
5 proved that the person engaged within the United States -- at
6 the order, request, direction or control of a foreign
7 principal -- in political activities for or in the interests of
8 the foreign principal, because that is one way that one can be
9 an agent of a foreign principal.

10 The term "political activities" means any activity
11 that the person engaging in believes will, or that the person
12 intends to, in any way influence any agency or official of the
13 government of the United States or any section of the public
14 within the United States with reference to formulating,
15 adopting or changing the domestic or foreign policies of the
16 United States or with reference to the political or public
17 interests, policies or relations of a government of a foreign
18 country or a foreign political party.

19 (Continued on next page)
20
21
22
23
24
25

O7C3MEN3

Charge

1 THE COURT: The term "political consultant" means any
2 person who engages in informing or advising any other person
3 with reference to the domestic or foreign policies of the
4 United States, or the political or public interests, policies,
5 or relations of a foreign country or of a foreign political
6 party.

7 A person can act as an "agent of a foreign principal"
8 if he acts under the order, direction, or control of a foreign
9 principal or at the request of a foreign principal. The term
10 "request" has a particular meaning here and it's narrower than
11 its meaning in everyday use. Here, not every ask by a foreign
12 principal qualifies as such a request. To qualify as a
13 request, an ask must be something more than an ordinary
14 solicitation, although it can be less than an order or command.
15 So a foreign principal does not make a qualifying request
16 merely by asking or persuading someone else for his own reasons
17 to do something, even if the request, if fulfilled, would
18 benefit the foreign principal. Instead, the foreign principal
19 making the ask must have some degree of authority over the
20 agent. To that end, the ultimate question, including based on
21 a request, is whether it is fair to draw the conclusion that an
22 individual is not acting independently, such as by simply
23 stating or believing his own views, but is instead acting as an
24 agent of the foreign principal.

25 To decide whether a person is in fact acting as an

O7C3MEN3

Charge

1 agent of a foreign principal, you must determine whether that
2 person is acting based on his own volition or views or whether
3 he is instead taking direction, or acting at the order, under
4 the control, or in response to a request, as I've already
5 defined it to you, from a foreign principal.

6 In determining whether this agency test is met, the
7 surrounding circumstances must evince some level of power by
8 the principal over the agent or some sense of obligation on the
9 part of the agent to achieve the principal's request.

10 Factors that may support an agency relationship
11 include: Specificity of the foreign principal's instructions
12 or requests, if the instructions or requests are coercive or
13 accompanied by the offer or the promise of compensation,
14 evidence of an ongoing relationship or coordination between the
15 principal and agent, whether the person seeks or receives
16 feedback on his work from the foreign principal, and if the
17 foreign principal's goals do not align with the alleged agent's
18 own interest or subjective viewpoint.

19 Conversely, the following factors may count against
20 finding an agency relationship: If the foreign principal's
21 instructions or requests are more general, the foreign
22 principal's goals align with the alleged agent's own interests
23 or subjective viewpoint, or the alleged agent's interactions
24 with the foreign principal or its intermediaries are only
25 infrequent.

O7C3MEN3

Charge

1 You should consider all of the surrounding
2 circumstances to determine whether the defendant acted as an
3 agent to foreign principal.

4 The third element is that the defendant acted
5 knowingly. The term "knowingly" was earlier defined. It has
6 the same meaning here.

7 In addition to the substantive offenses that I've just
8 described, the defendants are also charged with separate
9 conspiracies to violate federal laws.

10 We've discussed the substantive counts and I'm going
11 to revert to the conspiracy counts.

12 Count One is the conspiracy to bribe a public
13 official. It charges Menendez, Hana, and Daibes with
14 participating in a conspiracy to bribe an public official from
15 at least in or about 2018 through approximately 2023, in
16 violation of 18, United States Code, Section 371. It also
17 charges that certain overt acts were committed in furtherance
18 of the conspiracy.

19 You know a conspiracy is simply a criminal
20 partnership, a combination or agreement of at least two people
21 to join together to accomplish some unlawful purpose. I've
22 already told you this. Conspiracy simply means agreement.

23 The crime of conspiracy to violate a federal law is an
24 independent offense, separate and distinct from the commission
25 of the substantive crime. You already know that. Conspiracy

O7C3MEN3

Charge

1 is different than the substantive crime.

2 If a conspiracy exists, it's punishable as a crime,
3 even if it should fail to achieve its purpose. Consequently,
4 for a defendant to be guilty of conspiracy, there is no need
5 for the government to prove that he or any other conspirator
6 was actually successful in their criminal goals. You may thus
7 find the defendant guilty of the crime of conspiracy, even if
8 you find that the substantive crimes that were the object of
9 the conspiracy were never actually committed.

10 Each member of a conspiracy may perform separate and
11 individual acts. Some conspirators play major roles, other
12 play minor roles. An equal role is not what the law requires.

13 When people enter into a conspiracy to accomplish an
14 unlawful end, they become agents and partners of one another in
15 carrying out the conspiracy. Even a single act may be
16 sufficient to draw a defendant within the scope of a
17 conspiracy.

18 In order to find the defendant you are considering
19 guilty on Count One, which is conspiracy to bribe a public
20 official, the government has to prove beyond a reasonable doubt
21 each of the following three elements:

22 First, that the conspiracy charged in Count One in
23 fact existed. In other words, that from approximately 2018 to
24 approximately 2023, or any portion of that time period, there
25 was an agreement or understanding among two or more people to

O7C3MEN3

Charge

1 take action that would violate one or more of those provisions
2 of the law which make it illegal to demand or receive a bribe
3 as a public official or to offer or pay a bribe to a public
4 official;

5 Second, that the defendant you are considering
6 knowingly and willfully became a member of the conspiracy with
7 the intent to further its illegal purpose -- that is, with the
8 intent to achieve the illegal object of the charged conspiracy;
9 and

10 Third, that any one of the members of the conspiracy
11 knowingly committed at least one overt act in furtherance of
12 the conspiracy.

13 We'll look at the three elements.

14 First element is that you determine whether or not the
15 conspiracy existed. You already know this. A conspiracy is an
16 agreement by two or more people to take actions that violate
17 the law.

18 The essence of the crime of conspiracy is an agreement
19 to accomplish an unlawful objective. Again, you know it. It's
20 not necessary that a conspiracy actually succeed in its purpose
21 for you to conclude that it existed or that the defendant
22 actually committed the crime that is the object of the
23 conspiracy. Indeed, you may find the defendants guilty of
24 conspiracy, despite the fact that it was factually impossible
25 for any of the defendants to commit the substantive crime or

O7C3MEN3

Charge

1 goal of the conspiracy. This is because the success or failure
2 of a conspiracy is not material to the question of the guilt or
3 innocence of the conspirator.

4 The crime of conspiracy is complete once the unlawful
5 agreement is made and an act is taken in furtherance of that
6 agreement, and the conspiracy is entirely separate and distinct
7 from the substantive crimes that may be the goal of the
8 conspiracy. Again, you already know that.

9 In order for the government to satisfy this element,
10 you need not find that the alleged members of the conspiracy
11 met together and entered into any express or formal agreement.
12 And you don't need to find that the alleged conspirators stated
13 in words or writing what the scheme was or stated its object or
14 its purpose or stated every precise detail of the scheme or
15 stated the means by which its object or purpose was to be
16 accomplished. But what the government must prove is that there
17 was a mutual understanding, it could have been spoken or it
18 could have been unspoken, between two or more people to
19 cooperate with each other to accomplish an unlawful act.

20 You may find that the existence of an agreement to
21 disobey or disregard the law has been established by direct
22 proof. However, since conspiracy is by its very nature
23 characterized by secrecy, you may also infer its existence from
24 the circumstances of this case and the conduct of the parties
25 involved.

O7C3MEN3

Charge

1 In determining whether there has been an unlawful
2 agreement, you may judge acts and conduct of the alleged
3 co-conspirators that are done to carry out an apparent criminal
4 purpose. The adage "actions speak louder than words" is
5 applicable here.

6 In this regard, you may, in determining whether an
7 agreement existed here, consider the actions and statements of
8 all of those you find to be participants as proof that a common
9 design existed on part of the persons charged to act together
10 to accomplish an unlawful purpose.

11 Often the only evidence of a conspiracy that's
12 available is that of disconnected acts that, when taken
13 together and considered as a whole, evidence of a conspiracy or
14 agreement to secure a particular result as satisfactorily and
15 conclusively as more direct proof such as evidence of an
16 express agreement.

17 Of course, proof concerning the accomplishment of the
18 object or objects of the conspiracy may be the most persuasive
19 evidence of the existence of the conspiracy itself. But it's
20 not necessary that the conspiracy actually succeed in its
21 purpose in order for you to conclude that the conspiracy
22 existed.

23 In considering whether a conspiracy existed, you
24 should consider all of the evidence that has been admitted with
25 respect to the conduct and statements of each alleged

O7C3MEN3

Charge

1 co-conspirator, and any inferences that may reasonably be drawn
2 from that conduct and those statements.

3 It is sufficient to establish the existence of the
4 conspiracy if, after considering all of the relevant evidence,
5 you find beyond a reasonable doubt that the minds of at least
6 two alleged conspirators agreed, as I've explained, to work
7 together in furtherance of one or more of the objects alleged
8 in Count One of the indictment, and then an act was taken to
9 further that agreement. To find that the government has
10 established the existence of the conspiracy alleged in Count
11 One beyond a reasonable doubt, you must unanimously determine
12 that the government has proven that the conspiracy had as its
13 objective or objectives demanding or receiving of a bribe as a
14 public official, or offering or payment of a bribe to a public
15 official or both of those things. Which I'll describe in
16 greater detail in a moment.

17 In short, you must all agree on one or more objects of
18 the conspiracy, but need not find both objects to find a
19 defendant guilty.

20 Count One charges that the conspiracy in Count One had
21 two objectives or objects.

22 One, that a public official would demand or receive a
23 bribe in return for being influenced in the performance of an
24 official act. I've already instructed you on the elements of
25 this substantive crime in connection with my instructions on

O7C3MEN3

Charge

1 Count Five and Eleven.

2 Two, offering or giving a bribe to a public official
3 with the intent to influence the performance of any official
4 act.

5 I've already instructed you on the elements of this
6 substantive crime in connection with my instructions for Counts
7 Six and Twelve.

8 As I noted, if you find that the conspirators agreed
9 to accomplish either one or both of these two objectives, then
10 the illegal purpose element will be satisfied. But you must be
11 unanimous as to at least one objective.

12 As I instructed you earlier, you may find a defendant
13 guilty of conspiracy even if you find that the substantive
14 crimes that were the objects of the conspiracy were not
15 actually committed.

16 In order to satisfy the second element of Count One,
17 the government must prove that the defendant you are
18 considering willfully and knowingly entered into the
19 conspiracy, that is, that he agreed to take part in the
20 conspiracy with knowledge of its purposes and in furtherance of
21 one or more of its objectives as you've unanimously determined
22 those objectives to be in the first element.

23 An act is done knowingly if it is done purposely and
24 voluntarily, as opposed to mistakenly or accidentally. An act is
25 done willfully if it is done with an intention to do something

O7C3MEN3

Charge

1 that the law forbids, that is, with a bad purpose to disobey
2 the law, although the defendant need not know of the precise
3 law that he or she was violating or that the law was a federal
4 law.

5 Now as I said earlier, knowledge is a matter of
6 inference from the proven facts. However, you do have before
7 you the evidence of certain acts and conversations alleged to
8 have taken place involving one or more of the defendants or in
9 their presence, and you may consider this evidence in
10 determining whether the government has proven each defendant's
11 knowledge of the unlawful purposes of the conspiracy.

12 It is not necessary for the government to show that a
13 defendant was fully informed as to all the details of the
14 conspiracy in order for you to infer knowledge on his part.

15 To have guilty knowledge, a defendant need not have
16 known the full extent of the conspiracy or all of the
17 activities of all of its participants. It is not even
18 necessary for a defendant to know every other member of the
19 conspiracy.

20 Nor is it necessary that the defendants received any
21 monetary benefit from their participation in the conspiracy or
22 even had a financial stake in the outcome. Although proof of a
23 financial interest in the outcome of a scheme is not essential
24 or determinative, if you find that a defendant had or did not
25 have a financial or other interest, that is a factor you may

O7C3MEN3

Charge

1 properly consider in determining whether the defendant was a
2 member of the conspiracy.

3 The duration and extent of each defendant's
4 participation has no bearing on the issue of his guilt. He
5 need not have joined the conspiracy at the outset, and he need
6 not have received any benefit in return. A defendant may have
7 joined it for any purpose at any time in its progress, and he
8 will be held responsible for all that was done before he
9 joined, and all that was done during the conspiracy's existence
10 while he was a member, if those acts were reasonably
11 foreseeable and within the scope of that defendant's agreement.

12 Each member of a conspiracy may perform separate and
13 distinct acts and may perform them at different times. Some
14 conspirators may play major roles, while others may play minor
15 roles in the conspiracy. One participating in a conspiracy is
16 no less liable because his part is minor or subordinate. An
17 equal role or an important role is not what the law requires.
18 Even a single act can be sufficient to make a defendant a
19 participant in an unlawful conspiracy.

20 A person's mere association with a member of the
21 conspiracy, however, does not make that person a member of the
22 conspiracy, even when that association is coupled with
23 knowledge that a conspiracy is taking place. Mere presence at
24 the scene of a crime, even coupled with knowledge that a crime
25 is taking place, is not sufficient to support a conviction. In

O7C3MEN3

Charge

1 other words, knowledge without agreement and participation is
2 not sufficient. What is necessary is that a defendant
3 participate in the conspiracy with knowledge of its unlawful
4 purposes, and with an intent to aid in the accomplishment of
5 its unlawful objectives.

6 A conspiracy, once formed, is presumed to continue
7 until its objective is accomplished, or until there is some
8 affirmative act of termination by its members. So, too, once a
9 person is found to be a participant in the conspiracy, that
10 person is presumed to continue being a participant in the
11 venture, until a venture is terminated, unless it is shown by
12 some affirmative proof that the person withdrew and
13 disassociated himself from it.

14 It is not essential that the government prove that a
15 particular conspiracy alleged in the indictment started or
16 ended on any of the specific dates described for that
17 conspiracy. You know that because I've told you that. It is
18 sufficient if you find that the conspiracy was formed, and that
19 it existed for some time around or within the dates set forth
20 in the indictment. And that's why when I've been giving you
21 dates, I've been saying things like "in or about" or
22 "approximately."

23 In sum, the government must prove that a defendant,
24 with an understanding of the unlawful nature of the conspiracy,
25 knowingly and intentionally engaged, advised, or assisted in

O7C3MEN3

Charge

1 the conspiracy for the purpose of furthering an illegal
2 conspiracy. Only through that does a defendant become a
3 knowing and willing participant in the unlawful agreement.
4 That is to say, a conspirator.

5 Now let's turn to the third element of Count One, the
6 requirement of an overt act.

7 The last element the government must prove with regard
8 to Count One is that at least one overt act was knowingly
9 committed by at least one of the conspirators in furtherance of
10 the conspiracy.

11 You'll remember, ladies and gentlemen, earlier today I
12 told you some of the conspiracies required an overt act and
13 others didn't. Count One requires an overt act. An overt act
14 is an act that tends to carry out the conspiracy in part, but
15 need not necessarily be the object of the crime or itself wrong
16 or criminal. The purpose of the overt act requirement is just
17 to ensure that the agreement went beyond the mere talking or
18 agreeing stage.

19 You need not find that all the defendants in this case
20 committed an overt act. It is sufficient if you find that at
21 least one overt act was in fact performed by at least one
22 co-conspirator, whether a defendant or another co-conspirator,
23 to further the conspiracy within the time frame of the
24 conspiracy. Nor is it necessary for the defendant you are
25 considering to commit an overt act in order to be a member of

O7C3MEN3

Charge

1 the conspiracy.

2 Bear in mind that the overt act, standing alone, may
3 be entirely lawful. Frequently, however, an apparently
4 innocent act sheds its harmless character if it is a step in
5 carrying out, promoting, aiding, or assisting the
6 conspiratorial scheme. You are therefore instructed that the
7 overt act does not have to be an act which in and of itself is
8 criminal, or constitutes an objective of the conspiracy. It
9 must be an act that furthers the object of the conspiracy.

10 The indictment charges that a number of particular
11 overt acts were committed in furtherance of the conspiracy.
12 It's not necessary for the government to prove that any of the
13 specified overt acts that are set forth in the indictment were
14 in fact committed. Rather, the government can prove any overt
15 act, even if it's not listed in the indictment, provided that
16 the overt act is committed by one of the conspirators and it is
17 done to further the object of the conspiracy.

18 It is sufficient if you find beyond a reasonable doubt
19 that any one overt act occurred while the conspiracy was still
20 in existence. Nor is it necessary for you to reach unanimous
21 agreement on whether a particular overt act was committed in
22 furtherance of the conspiracy. You just need to all agree that
23 at least one overt act was in fact committed.

24 So that was Count One, the conspiracy to bribe a
25 public official.

O7C3MEN3

Charge

1 Next relevant conspiracy is Count Four, conspiracy to
2 obstruct justice. I previously discussed Count Eighteen, which
3 charges Menendez with obstructing justice in relation to an
4 investigation of being conducted here in the Southern District
5 of New York.

6 I'll now discuss two counts related to conspiracies to
7 obstruct justice. First, Count Four. Count Four charges
8 Menendez and Daibes with conspiring, remember conspiracy
9 requires at least two people to agree, so this conspiracy count
10 charges Menendez and Daibes with conspiring to obstruct justice
11 in relation to the federal criminal prosecution of Daibes in
12 the District of New Jersey.

13 For this count, the government must prove three
14 elements beyond a reasonable doubt:

15 First, that the conspiracy to obstruct justice charged
16 in Count Four actually existed, in other words, from
17 approximately 2018 through approximately 2023, or any portion
18 of that time, there was an agreement between two or more people
19 to take actions that would violate one or more of those
20 provisions of the law which make it illegal to obstruct
21 justice;

22 Second, that the defendant you are considering,
23 whether it's Menendez or Daibes, knowingly and willfully became
24 a member of the conspiracy with an intent to further its
25 purpose. That is, with the intent to achieve the illegal

O7C3MEN3

Charge

1 object of the charged conspiracy; and

2 Third, that any one of the members of the conspiracy
3 knowingly committed at least one overt act in furtherance of
4 the conspiracy.

5 I have just instructed you on these elements in
6 connection with Count One, and those instructions apply here as
7 well. The difference between Counts One and Four is the goal
8 of the conspiracy. As to Count Four, the government charges
9 that the goal of the conspiracy was to obstruct the criminal
10 prosecution of Daibes pending in the District of New Jersey.

11 I've already told you the elements of the substantive
12 crime of obstruction of justice in connection with my
13 instructions in Count Eighteen, which was the substantive crime
14 of obstruction of justice.

15 The other count related to conspiracy to obstruct
16 justice is Count Seventeen. So there are two counts that are
17 conspiracies to obstruct justice. One is Count Four, involving
18 Menendez and Daibes, and the other is Count Seventeen. That
19 count charges Menendez with conspiring to obstruct justice in
20 relation to an investigation pending in the Southern District
21 of New York against him.

22 But this count the government must prove the following
23 three elements:

24 First, that the conspiracy charged in Count Seventeen
25 existed, that is, from approximately June 2022 through 2023, or

O7C3MEN3

Charge

1 any portion of that time, there was an agreement or
2 understanding among two or more people to take actions that
3 violate one or more of those provisions of the law that make it
4 illegal to obstruct justice;

5 Second, that Menendez knowingly and willfully became a
6 member of the conspiracy with intent to further its purpose.
7 That is, with the intent to achieve the illegal object of the
8 charged conspiracy; and

9 Third, that any one of the members of the conspiracy
10 knowingly committed at least one overt act in furtherance of
11 the conspiracy.

12 I earlier instructed you on these elements in
13 connection with Count One. Those instructions apply here.

14 The difference between this count and the other
15 conspiracy counts is the goal of the charged conspiracy. In
16 regard to Count Seventeen, the government charges the goal of
17 the conspiracy was to obstruct an investigation pending in the
18 Southern District of New York. I've instructed you on the
19 elements of the substantive crime of obstruction of justice in
20 connection with Count Eighteen when I went through the
21 substantive counts.

22 We've previously discussed Count Sixteen of the
23 indictment, which charges Menendez with being a public official
24 acting as the agent of a foreign principal.

25 Fifteen charges Menendez and Hana with conspiring,

O7C3MEN3

Charge

1 that is agreeing together, for a public official to act as an
2 agent of a foreign principal from approximately 2018 until
3 approximately 2022.

4 I've instructed you already in connection with Counts
5 One, Four and Seventeen on the three conspiracy elements that
6 apply to Count Fifteen -- that the charged conspiracy existed;
7 that the defendant you are considering knowingly and willfully
8 became a member of the conspiracy, with intent to further its
9 illegal purpose; and that one of the members had knowingly
10 committed an overt act. Those instructions apply here as well.

11 As to Count Fifteen, the government charges that the
12 goal of the conspiracy was to have a public official,
13 specifically Menendez, act as an agent of a foreign principal.
14 That is, the government of Egypt and Egyptian officials. I've
15 already instructed you on the elements of the substantive crime
16 of public official acting as an agent of a foreign principal in
17 connection with my instructions for Count Sixteen.

18 I'm now going to turn to Count Two, which is another
19 conspiracy count. It charges conspiracy to commit honest
20 services wire fraud. It charges Menendez, Hana, and Daibes
21 with participating in a conspiracy to violate the honest
22 services wire fraud statute, which I've described earlier.

23 You know that a conspiracy is a kind of criminal
24 partnership, an agreement of two or more people to join
25 together to accomplish an unlawful purpose. In order to

O7C3MEN3

Charge

1 satisfy its burden of proof with respect to Count Two, the
2 government must establish two elements beyond a reasonable
3 doubt:

4 First, the existence of the conspiracy charged in
5 Count Two; and

6 Second, that at some point the defendant you are
7 considering, whether Menendez, Hana, or Daibes, knowingly and
8 willfully became a member of and joined in the conspiracy.

9 Unlike the conspiracies charged in Counts One, Fifteen
10 and Seventeen, the conspiracy charged in Count Two does not
11 require an overt act.

12 I previously instructed you in connection with Count
13 One on the law relevant to determining whether a conspiracy
14 existed, and whether a defendant became a member of that
15 conspiracy. Rely on those instructions and apply them to Count
16 Two, except that the conspiracy charged in Count Two has as its
17 object honest services wire fraud.

18 In deciding whether the conspiracy existed, determine
19 whether the conspirators agreed to accomplish that object, that
20 is, honest services wire fraud. I've already instructed you on
21 the elements of the substantive crime of honest services wire
22 fraud in connection with my instructions for Count Seven, Nine
23 and Thirteen.

24 Now let's go to Count Three, which charges Menendez
25 with participating in a conspiracy to commit extortion under

O7C3MEN3

Charge

1 color of official right, in violation of 18, United States
2 Code, Section 1951.

3 In order to satisfy its burden of proof on this count,
4 the government must prove two elements beyond a reasonable
5 doubt:

6 One, that the charged conspiracy existed; and

7 Two, that Menendez knowingly and intentionally became
8 a member of the conspiracy with the intent to accomplish its
9 unlawful purpose.

10 I've just charged you on these two elements in
11 connection with Count Two. Apply those instructions here. The
12 difference between Count Two and Count Three is the goal of the
13 conspiracy. In Count Three the government charges that the
14 goal of the conspiracy was to commit extortion under color of
15 official right. I've already instructed you on the elements of
16 the substantive crime of extortion, in connection with my
17 instructions for Count Eight, Ten and Fourteen.

18 As you know, the government charged that a conspiracy
19 existed in Count One, conspiracy to bribe a public official,
20 and Count Two, conspiracy to commit honest services wire fraud.
21 The defendants contend that the government's proof fails to
22 show the existence of only one overall conspiracy in each of
23 Counts One and Two. The defendants claim instead that the
24 government's proof only supports allegations of different,
25 separate and independent conspiracies with various groups of

O7C3MEN3

Charge

1 members in each of those counts.

2 Whether there existed a single unlawful agreement in
3 each of those counts, or many such agreements, or indeed, no
4 agreement at all, is a question of fact for you, the jury, to
5 determine in accordance with these instructions.

6 When two or more people join together to form one
7 common unlawful design or purpose, a single conspiracy exists.
8 By way of contrast, multiple conspiracies exist when there are
9 separate unlawful agreements to achieve distinct purposes.

10 Proof of several separate and independent conspiracies
11 is not proof of a single, overall conspiracy charged in each of
12 Counts One and Two, unless one of the conspiracies proved
13 happens to be the single conspiracy described in the count you
14 are considering.

15 A single conspiracy does not become multiple
16 conspiracies, however, merely because it may involve two or
17 more phases or spheres of operations, so long as there is
18 sufficient proof of mutual dependence and assistance. You may
19 find that there was a single conspiracy in the count you are
20 considering despite the fact that there were changes in either
21 personnel, or activities, or both, so long as you find that
22 some of the co-conspirators continued to act for the duration
23 of the conspiracy for the purposes charged in the count you are
24 considering. The fact that the members of a conspiracy are not
25 always identical does not necessarily imply that separate

O7C3MEN3

Charge

1 conspiracies exist. In addition, if you find a master
2 conspiracy that includes certain sub-schemes, that does not
3 necessarily constitute a finding of multiple unrelated
4 conspiracies.

5 In determining whether a series of events constitutes
6 a single conspiracy or a separate and unrelated conspiracy or
7 conspiracies, you should consider whether there is a common
8 goal or goals among the alleged conspirators, whether there
9 existed common or similar methods, whether and to what extent
10 alleged participants overlapped in their various dealings,
11 whether and to what extent the activities of the alleged
12 conspirators were related and interdependent, how helpful each
13 conspirator's contributions were to the goal of others, and
14 whether the scheme contemplated a constituting objective that
15 could not be achieved without the ongoing consideration of the
16 conspirators.

17 The participants' goals need not coincide exactly for
18 a single conspiracy to exist, so long as their goals are not at
19 cross purposes, and co-conspirators need not agree on all of
20 the details of conspiracy, where the essential of the plan is
21 agreed upon.

22 On the other hand, if you find that the specific
23 single conspiracy charged in the count you are considering did
24 not exist, you cannot find any defendant guilty of that
25 conspiracy. This is so even if you find that some conspiracy,

O7C3MEN3

Charge

1 other than the one charged in the count you are considering,
2 existed, even though the purposes of both conspiracies may have
3 been the same and even though there may have been some overlap
4 in membership.

5 Similarly, if you find that a particular defendant was
6 a member of another conspiracy, and not the ones charged in the
7 count you are considering, then you must acquit that defendant
8 of the conspiracy charges for the applicable count or counts.

9 Therefore, what you must do is determine whether the
10 conspiracies charged in Counts One and Two in fact existed. If
11 they did, then you must determine the nature of the conspiracy
12 and who its members were.

13 With respect to Counts One, Two, Six, Seven, Twelve,
14 and Thirteen, if you find defendant Fred Daibes guilty of one
15 or more of those counts, you must then determine for each those
16 counts on which you find Daibes guilty whether he was released
17 on bail in a federal case at the time of the offense. For
18 those counts, the verdict form has a separate line for you to
19 answer this question, and you'll see it there.

20 I want to return to the two ways the defendant can
21 commit a substantive crime, which I talked about at the
22 beginning of these charges, he can commit a crime: First, as a
23 principal, which includes both committing or willfully causing
24 someone else to commit the crime. He can also commit a crime
25 as an aider and abettor.

O7C3MEN3

Charge

1 With respect to Counts Five through Fourteen, Sixteen
2 and Eighteen, which charge the substantive offenses of bribery,
3 honest services wire fraud, extortion under color of official
4 right, obstruction, and a public official acting as a foreign
5 agent, the defendants charged in those counts are also charged
6 with having aided and abetted or willfully caused another
7 person to commit each of those offenses. These are two
8 different, alternative ways of committing a crime, and you
9 don't have to consider whether a defendant did this if you find
10 that he is guilty himself of committing the crime you are
11 considering.

12 I'll take each of these concepts, that is, aiding and
13 abetting, and willfully causing a crime, those are different
14 concepts, in turn.

15 So let's look first at aiding and abetting. The
16 aiding and abetting statute provides, in relevant part that:
17 Whoever commits an offense or aids, abets, counsels, commands,
18 induces, or procures its commission, is punishable as a
19 principal. What that means, ladies and gentlemen, is that even
20 if the defendant you are considering did not himself commit the
21 offense, the government may meet its burden of proof by proving
22 that another person actually committed the offense with which
23 the defendant is charged; and proving that the defendant aided
24 or abetted, that is, helped, that person in the commission of
25 the offense. A person who aids or abets someone else to commit

O7C3MEN3

Charge

1 an offense is just as guilty of that offense as if he committed
2 the offense himself. Accordingly, you may find a defendant
3 guilty of the substantive crime if you find beyond a reasonable
4 doubt that the government has proven that another person
5 committed the crime, and that the defendant you are considering
6 aided and abetted that person in the commission of the offense.

7 Again, that's a lot of words, but it's all very
8 logical, it seems to me.

9 In order to prove a defendant guilty as an aider and
10 abettor, the government has to prove beyond a reasonable doubt:

11 First, that one or more other persons committed the
12 charged offense, that is, all of the elements of the particular
13 crime were committed or caused to be committed by someone or
14 multiple people;

15 Second, that the defendant, knowing that such a crime
16 was being committed, intentionally associated himself with that
17 crime; and

18 Third, that the defendant intentionally took some
19 action to help the crime succeed.

20 To act intentionally means to act deliberately and
21 purposefully, rather than by mistake, accident, mere
22 negligence, or some other innocent reason.

23 Please note, however, that the mere presence of the
24 defendant where a crime is being committed, even coupled with
25 knowledge by the defendant that a crime is being committed, or

O7C3MEN3

Charge

1 merely associating with others who were committing a crime is
2 not sufficient to establish aiding and abetting. One who has
3 no knowledge that a crime is being committed or is about to be
4 committed, but who inadvertently does something that aids in
5 the commission of the crime, is not an aider and abettor. And
6 again, that's all very logical.

7 An aider and abettor must know that the crime is being
8 committed and act in a way that intended to bring about the
9 success of the criminal venture.

10 To determine whether the defendant aided or abetted
11 the commission of the crime with which that defendant is
12 charged, ask yourself these questions: Did the defendant
13 participate in the crime charged as something he wished to
14 bring about? Did he associate himself with the criminal
15 venture knowingly and willfully? Did he seek by his actions to
16 make the criminal venture succeed?

17 If he did, then he's an aider and abettor and guilty
18 of the offense. If he did not, then he's not an aider and
19 abettor.

20 So I described to you what an aider and abettor is and
21 what aiding and abetting a crime means. Now we'll turn to what
22 willfully causing a crime means.

23 Federal law provides that whoever willfully causes an
24 act to be done which, if directly performed by him, would be an
25 offense against the United States, is punishable as a

O7C3MEN3

Charge

1 principal.

2 What does the term "willfully cause" mean? It does
3 not mean that the defendant need have physically or personally
4 committed the crime or supervised or participated in the actual
5 criminal conduct charged in the indictment. The meaning of the
6 term "willfully caused" can be found in the answers to the
7 following questions: Did the defendant intend the crime to
8 occur? Did he intentionally cause someone else or other people
9 to engage in the conduct constituting the crime?

10 If you are persuaded beyond a reasonable doubt that
11 the answer to both of those questions is yes, then the
12 defendant you are considering is guilty of the crime charged,
13 just as if he himself had actually committed it.

14 To prove the defendant guilty in this way, the
15 government need not prove that he acted through a guilty
16 person, that is, the defendant can be found liable even if he
17 acted through someone totally innocent and had no knowledge of
18 the crimes charged in the indictment.

19 Now let's turn to venue, and you've heard some
20 discussion in the summations about venue.

21 In addition to the foregoing elements of the offenses,
22 you must consider whether an essential part of each of the
23 crimes charged, or as to each of the conspiracy counts any act
24 in furtherance of the crimes charged, reasonably foreseeable
25 occurred within the Southern District of New York.

O7C3MEN3

Charge

1 The Southern District of New York includes Manhattan,
2 the Bronx, Westchester, Rockland, Putnam, Sullivan, and Orange
3 Counties, the waterways surrounding these counties, including
4 the East River, the Hudson River, and the Kill Van Kull strait,
5 and all of the bridges that traverse those waterways, including
6 Verrazzano-Narrows Bridge which traverses the Narrows Strait,
7 the body of water separating Staten Island and Brooklyn; the
8 Bayonne Bridge, which traverses the Kill Van Kull strait, the
9 body of water separating Staten Island and Bayonne, New Jersey;
10 and the Goethals Bridge and the Outerbridge Crossing, both of
11 which traverse the Arthur kill strait, the body of water
12 separating Staten Island and Union and Middlesex Counties in
13 New Jersey.

14 I should note on this issue -- and the issue of venue
15 alone -- the government does not have to prove venue beyond a
16 reasonable doubt. The burden on the government is a lower
17 burden. The government has the burden of proving venue simply
18 by a preponderance of the evidence. A preponderance of the
19 evidence means that the government must prove that it is more
20 likely than not that an essential part of the element or any
21 act in furtherance of the conspiracy you are considering
22 reasonably foreseeable occurred in the Southern District of New
23 York. Thus, with regard to each count, the government has
24 satisfied its venue obligation if you conclude that it is more
25 likely than not that such a part of the crime charged, or any

O7C3MEN3

Charge

1 act in furtherance of the conspiracy charged, reasonably
2 foreseeable occurred within the Southern District of New York.
3 The government does not have to prove that the complete crime
4 was committed within the Southern District of New York, or that
5 the defendants were ever actually in the Southern District of
6 New York.

7 You have to look at venue separately for each count.
8 Venue on one count does not establish venue on another count.
9 Although, if applicable, you may rely on the same evidence to
10 establish venue on any number of counts.

11 With respect to the conspiracy offenses, it is
12 sufficient to establish venue if the government proves that any
13 act in furtherance of the conspiracy charged reasonably
14 foreseeable occurred in the Southern District of New York. The
15 act itself need not be a criminal act. It could include, for
16 example, meeting with others involved in the criminal scheme
17 within this district, so long as it is in furtherance of the
18 conspiracy. The act need not be taken by a defendant or a
19 conspirator, as long as the act was caused by the conduct of
20 the defendant or conspirator, and was reasonably foreseeable to
21 the defendant you are considering.

22 With respect to the substantive counts resting on a
23 bribe being demanded, sought, received, accepted, or agreed to
24 be received or accepted, Counts Five and Eleven, it is
25 sufficient to establish venue if you find that the demanding,

O7C3MEN3

Charge

1 seeking, receiving, accepting, or agreeing to receive or accept
2 anything of value occurred in the Southern District of New
3 York, including acts that were part and parcel of this conduct.

4 With respect to the substantive counts resting on a
5 bribe being offered, given, or promised, Counts Six and Twelve,
6 it is sufficient to establish venue if you find that the
7 offering, giving, or promising of anything of value occurred in
8 the Southern District of New York, including acts that were
9 part and parcel of this conduct.

10 With respect to the substantive offenses of honest
11 services wire fraud, Count Seven, Nine, and Thirteen, it is
12 sufficient to establish venue if you find that any of the wire
13 communications you found to satisfy the fourth element of the
14 offense, use of interstate or international wires, were
15 transmitted from or to the Southern District of New York, so
16 long as the defendant reasonably anticipated that a wire
17 communication in furtherance of the scheme would be transmitted
18 from or to the Southern District of New York.

19 With respect to the substantive extortion counts,
20 Counts Eight, Ten, and Fourteen, it is sufficient to establish
21 venue if you find that interstate commerce was affected in this
22 district as I've defined affect on interstate commerce above,
23 or if you find that acts of extortion took place in this
24 district.

25 In addition, if you find a defendant guilty of any of

O7C3MEN3

Charge

1 the substantive offenses on an aiding and abetting theory, you
2 don't have to consider venue with respect to that defendant, as
3 long as the government has established venue with respect to
4 the person whom the person aided and abetted.

5 Finally, with respect to the obstruction of justice
6 offenses, Counts Four, Eighteen, and Seventeen, venue exists in
7 the district to which the official proceeding, whether or not
8 pending are about to be instituted, was intended to be affected
9 or in the district to which the conduct constituted in the
10 alleged offense occurred. An official proceeding includes a
11 federal grand jury.

12 As I said, unlike the elements of the offenses that I
13 have just discussed at length, each of which must be proved
14 beyond a reasonable doubt, the government is required to prove
15 venue simply by a preponderance of the evidence, which is a
16 lower standard of proof than proof beyond a reasonable doubt.

17 The government need only prove venue in one of the
18 applicable ways that I have described above for each count.

19 If you find that the government failed to prove venue
20 as to the defendant you are considering by a preponderance of
21 the evidence as to any count, you must return a verdict of not
22 guilty as to that defendant on that count.

23 Now, you know, because I've told you several times,
24 that the indictment alleges certain acts occurred on or about a
25 specific date or time or involved specific amounts. We haven't

O7C3MEN3

Charge

1 talked about the amounts, but we've talked about dates and
2 times. It doesn't matter, ladies and gentlemen, if the
3 evidence you heard at trial indicates that a particular act
4 occurred on a different date or time or involved a different
5 amount. The law requires only a substantial similarity between
6 the dates, times, and amounts alleged in the indictment and the
7 dates, times, and amounts that you find to have been
8 established by the evidence.

9 In addition, you must consider each count of the
10 indictment and each defendant's involvement in that count
11 separately, and you must return a separate verdict on each
12 defendant for each count in which he is charged. And you know
13 that. I've already told you.

14 Again, you go through the verdict sheet however you
15 want. You can go through it in the order of the counts set
16 forth in these charges, or just One, Two, Three, or however you
17 want. It may be easiest to go through it in the charges, but
18 that's entirely up to you.

19 In reaching your verdict, ladies and gentlemen, bear
20 in mind that guilt is personal and individual. Your verdict
21 that a defendant is guilty or not guilty must be based solely
22 upon the evidence about each defendant. The case against each
23 defendant on each count stands or falls upon the proof or lack
24 of proof against that defendant alone, and your verdict as to
25 any defendant on any single count should not control your

O7C3MEN3

Charge

1 decision as to any other defendant or any other count. No
2 other considerations are proper.

3 Let me give you some final directions on how you are
4 to arrive at your verdict. The evidence presented has raised
5 factual issues that you must decide as the triers of the fact,
6 and you must decide those issues, resolve those issues, solely
7 on the basis of the evidence you have heard or the lack of
8 evidence, and these instructions on the law.

9 Your sworn duty as jurors is to determine whether each
10 defendant is guilty or not guilty, solely on the basis of the
11 evidence or lack of evidence and these instructions on the law.

12 You must not be influenced by sympathy, or by any
13 assumption, conjecture or inference stemming from personal
14 feelings, the nature of the charges, or your view of the
15 relative seriousness or lack of seriousness of the alleged
16 crimes.

17 I caution you, ladies and gentlemen, that under your
18 oath as jurors, you are not to consider the punishment that may
19 be imposed upon any defendant in the event of conviction. I've
20 told you that already. The duty of imposing a sentence in the
21 event of conviction rests exclusively on me, the Court. Your
22 function -- and you know this -- is to weigh the evidence and
23 to determine the guilt or non-guilt of each defendant solely on
24 the basis of the evidence and the law which I have given you,
25 and which you must apply to the facts as you find them.

O7C3MEN3

Charge

1 Each of you is entitled to your own opinion, but you
2 are required to exchange your views with your fellow jurors.
3 This is the essence of jury deliberations.

4 You know, before I told you not to discuss the
5 evidence. Well now, it's your duty to discuss the evidence.
6 If you have a point of view, and after reasoning with other
7 jurors it appears that your own judgment is open to question,
8 then of course you should not hesitate in yielding your
9 original point of view, if you are convinced that the opposite
10 point of view is really one that satisfies your judgment and
11 your conscience.

12 However, you are not to give up a point of view that
13 you conscientiously believe in, simply because you may be
14 outnumbered or outweighed. Vote with the others only if you
15 are convinced on the evidence and the facts and the law that
16 that's the correct way to decide the case.

17 (Continued on next page)

18
19
20
21
22
23
24
25

O7cWmen4

Charge

1 THE COURT: Just a moment, ladies and gentlemen.

2 Ladies and gentlemen, you've seen we've made a record
3 of these proceedings; you've seen the reporters here. If you
4 wish at any time to have any part of the testimony read back,
5 have the foreperson send me a note and just say what you want
6 read back.

7 Now, just keep in mind a couple of things. Be as
8 specific as you can be, because we have to find the area you're
9 looking for, the lawyers have to agree on it, with the Court,
10 as to what we're going to send back. So be as specific as you
11 can.

12 Also, if you ask for all of the testimony of person X
13 and that person was on the stand for three days, it may take
14 three days to read it back. It won't, actually, because we
15 don't read the objections and so forth, but it will take a
16 considerable period of time. We're prepared to do that. I'm
17 just alerting you to the fact that it will take time to read
18 anything back. But you certainly can ask. You have that
19 right, and we'll be pleased to respond to any questions you
20 have.

21 Now, I've already told you that we have a computer
22 that's been loaded with all the exhibits so you'll be able to
23 call up any of the exhibits, except the actual materials. If
24 you want to see those, the cash or the gold or the jewelry,
25 you'll have to come back into the courtroom. I'm not telling

O7cWmen4

Charge

1 you you should do that or have to do it. I'm just telling you
2 it's a service we have available and the exhibits will be
3 available to you in the courtroom.

4 You can send me any notes you want, or any questions,
5 for that matter, but they have to be in writing, signed by the
6 foreperson, dated and timed. You'd say, your Honor, we'd like
7 the testimony of Mr. X in this regard or Ms. Y, whatever you
8 want. But whenever you send me notes, do not give me any
9 indication of your vote. I don't want any indication of
10 partial votes or anything like that. And the foreperson should
11 sign any notes.

12 Now, it's my normal custom to appoint juror No. 1 as
13 the foreperson.

14 Juror No. 1, I'm doing that provisionally. If for any
15 reason you don't wish to serve as foreperson, just let your
16 fellow jurors know that when you go back in, and then the jury
17 will select another foreperson. I don't want any disputes or
18 anything like that. If there's any difficulty in choosing
19 another foreperson, you'll let me know and I'll choose a
20 foreperson. But in the normal course, you would be the
21 foreperson, juror No. 1. Again, if you don't want to, just let
22 your colleagues know that.

23 Now, at the end of the process, after you've completed
24 the verdict sheet, what you should do is the foreperson will
25 have an envelope, everybody signs it, you put the verdict sheet

O7cWmen4

Charge

1 in an envelope and you send a note to say, your Honor, the jury
2 has a verdict, without telling me what the verdict is. And
3 then we'll assemble everybody in open court. The verdict must
4 be taken in a rather formal proceeding in open court. So don't
5 tell me. Keep the envelope sealed and keep the verdict sheet,
6 the completed verdict sheet, in the envelope and come out into
7 court. And I'll guide everyone through the process of taking
8 the verdict.

9 The verdict must be announced only in open court at
10 the end of your deliberations. And you must be unanimous. It
11 must be a unanimous verdict of all of you.

12 Only 12 of you, the first 12 jurors, will be
13 deliberating. The five jurors in the back will not be
14 deliberating. However, I am not going to be excusing the five
15 jurors in the back, for reasons that I'll explain to the five
16 jurors in the back at a later time. But what's important
17 now -- and the reason you saw that I stepped to the side --
18 normally, I would say start deliberating. I'm informed by my
19 deputy that the jury would like to remain together, all of you,
20 for lunch. And that's perfectly fine, except you can't start
21 deliberating now because there are going to be 17 of you there.

22 So it's a little unusual, but I'm not sending you off
23 to deliberate now. It's 1 o'clock. You'll go into the jury
24 room, enjoy your lunch. Do not discuss this case for the next
25 hour. OK? Do not exchange views. Talk about whatever you

O7cWmen4

Charge

1 like, but don't deliberate. Don't discuss the case. Enjoy the
2 lunch.

3 At 2 o'clock, I'll bring you back here. There will be
4 a marshal, I'll swear the marshal in, and I'll have you start
5 your deliberations at 2 o'clock. All right? And I'll talk to
6 the five people in the back.

7 Enjoy the lunch. Don't deliberate. I'll see you here
8 in an hour.

9 (Jury not present)

10 THE COURT: You may be seated in the courtroom.

11 Have the parties discussed whether or not the
12 indictment needs any redactions, in the event they ask for an
13 indictment?

14 MR. FEE: We haven't discussed it, your Honor, but I
15 think it's evident it will be redacted. I think we agree on
16 that subject.

17 THE COURT: All right. Go ahead and do it.

18 MR. RICHENTHAL: We prepared a potential redacted
19 version, excising certain matters that the Court had ruled were
20 part of the speech and debate clause. We'll provide that to
21 the defense, and hopefully the parties can confer and agree on
22 a redacted version.

23 THE COURT: Yes. I don't think it should be
24 difficult.

25 All right. Thank you.

O7cWmen4

Charge

1 MR. RICHENTHAL: And in addition, let me note the
2 laptop is available. It has been inspected by all defense
3 counsel. It's being provided by our paralegals, so that's
4 ready to go.

5 THE COURT: Don't put it into the jury room yet.

6 MR. RICHENTHAL: No. No, it's not. I just wanted to
7 put on the record that all the defense counsel have had the
8 opportunity to inspect it.

9 THE COURT: All right.

10 MR. RICHENTHAL: The final thing, and it's probably
11 immaterial, but in the list of counties that are in the
12 Southern District of New York, the written charge is correct
13 and includes Dutchess County. I think the Court didn't say
14 Dutchess County. I do not think it matters. I'm just noting
15 it.

16 MR. FEE: Objection, your Honor.

17 MR. RICHENTHAL: I'm not aware of anything that
18 happened in Dutchess County. I don't think the Court needs to
19 direct anything. I'm just letting you know.

20 THE COURT: Does any party want me to correct that, to
21 add Dutchess County?

22 MR. FEE: No, your Honor.

23 THE COURT: All right. I learned a lot about the
24 waterways when I was reading it.

25 Are there any exceptions that wish to be taken to the

O7cWmen4

1 charge as read?

2 Government.

3 MR. RICHENTHAL: Not other than what we covered
4 earlier today.

5 THE COURT: Yes.

6 MR. FEE: No.

7 MR. LUSTBERG: Your Honor, just those that we've
8 previously noted.

9 THE COURT: Of course.

10 MR de CASTRO: No.

11 THE COURT: All right.

12 You have, of course, all the objections that were set
13 forth in the charging conference.

14 I'll see everybody in one hour. Thank you.

15 (Luncheon recess)

16

17

18

19

20

21

22

23

24

25

O7cWmen4

AFTERNOON SESSION

2:00 p.m.

(Jury present)

THE COURT: Good afternoon, ladies and gentlemen.

You may be seated in the courtroom.

I now am going to have the jury commence deliberations, but first we need to swear the marshal in.

Marshal, please come forward. My deputy will address you.

(Marshal sworn)

THE COURT: Thank you.

Ladies and gentlemen, you know I've been telling you not to deliberate. Now I'm going to direct you to deliberate. You each have a copy of the charge. My deputy will hand you a copy of the verdict sheet. Pardon me. The marshal has it. And you will find that the computer has been loaded with all of the exhibits. You also will have paper and pencils or pens.

We're here as long as you want. In the normal course we would end at 5 o'clock. If you wanted to stay later, just let me know in a note from the jury, but assuming I don't hear anything from you, I'll bring you in and have you end your deliberations for the day and come back on Monday. It's entirely up to you as to when you leave.

As I said, you must exchange your views now. When you go home in the evening, again, don't discuss the case with

O7cWmen4

1 anyone. Don't do any research or Google or anything or read
2 any publicity or anything along those lines.

3 Ladies and gentlemen, if the first two rows of jurors
4 will rise, the first 12 jurors, I now instruct you to commence
5 your deliberations. Thank you.

6 (At 2:10 p.m., the jury retired to deliberate)

7 THE COURT: You may be seated in the courtroom.

8 Jurors 13 and up, I want to thank you for being here
9 over these nine weeks. It's a great public service that you
10 have undertaken, and I and my staff and the parties, the
11 lawyers, genuinely appreciate it.

12 I don't want you to think that your service has been
13 for naught -- for at least two reasons. One is that I assure
14 you that the lawyers here were watching all of the jurors,
15 yourselves included, because they try to determine what the
16 jurors are thinking, and they were watching you throughout.
17 Your aspect, I'm sure, has given them information to interpret
18 however they want.

19 But more important, or as important, I'm not going to
20 discharge you now, and the reason for that is there are
21 occasions when one of the sitting 12 jurors has to be excused,
22 for one reason or another. And in that event, I will need to
23 call on one of you to take the place of that juror. Now, it's
24 not that usual; that is, that a juror is excused. It's not
25 that usual, but it does happen. In fact, it occurred this

O7cWmen4

1 morning in this courthouse in another trial here, where a
2 sitting juror had to be excused and one of the -- I'll call you
3 alternate jurors. It's not technically true, but the alternate
4 juror had to be called back.

5 I can't do that if I discharge you. So I'm not going
6 to discharge you now. You still will technically be serving as
7 jurors. But I can tell you you don't have to come back here in
8 the morning or go to the jury clerk or anything like that. You
9 should go about your lives. OK?

10 I am going on to direct you, because there is a
11 possibility that one or more of you may have to be seated as
12 jurors, to continue the rules I set forth earlier; that is,
13 don't discuss this case with anyone else. Don't discuss it
14 amongst the five of you or with your family members or anyone
15 else. Keep an open mind. Don't listen to any of the publicity
16 or social media or anything of that nature.

17 If you want, you can ask my deputy to notify you when
18 a verdict is reached, and then you'll know there's no
19 possibility that you'll be asked to come back. You don't have
20 to do that, but I guess the main thing is you should go about
21 your lives. You don't need to report here or do anything here.

22 Is that clear? Any questions?

23 I genuinely thank all five of you. It's been two
24 months, and it's a great service. Thank you again. I can't
25 discharge you, but you can go about your business.

O7cWmen4

1 Thank you. My deputy will show you out.

2 (Alternate jurors not present)

3 THE COURT: The lawyers should stay close. I do find
4 that in the first 15 or 20 minute, quite frequently, the
5 jurors, as they get settled, will send a note out asking for
6 this or that. In any event, make sure my deputy knows how to
7 reach you, and I want everybody to stay relatively close to the
8 courthouse in case you need to come back.

9 All right. Thank you very much.

10 (Recess pending verdict)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

O7C3MEN5

Deliberations

(In open court; jury not present)

THE COURT: We have a jury note from earlier. It's labeled Court Exhibit No. 1 at 2:25 p.m.

"We need a display port cable to connect the laptop to the TV screen." And the parties provided that. This note was given to the parties by my deputy. The parties provided that.

It's 5 o'clock. We'll let the jury go home now. I'm just going to have them line up in front of me, we'll discharge them. Bring the jury in, please.

I'm told they need time to do something. So be seated. Five minutes. I guess they're getting their stuff together.

I'm going to step off the bench. You don't need to rise.

(Pause)

(Jury present)

THE COURT: Good evening, ladies and gentlemen of the jury. I'm told you wish to leave. It's 5 o'clock.

My instructions are the same. Do not discuss this case with anyone else. Don't do any research. Don't watch any social media or any news reports about it over the weekend.

We'll see you at 9:30 on Monday. We cannot begin until all 12 of you are here, and don't begin deliberating until I see all 12 of you are here, you're brought out by the marshal, I see that you're here, and then I'll tell you to

O7C3MEN5

Deliberations

1 commence deliberating again. Okay. Until then, don't
2 deliberate in small groups or anything, and don't discuss the
3 case with anyone else. Don't do any research.

4 Enjoy the weekend. We'll see you at 9:30 on Monday.

5 (Jury excused)

6 THE COURT: I'll see everyone on Monday. Enjoy the
7 weekend.

8 (Adjourned until July 15, 2024, at 9:30 a.m.)